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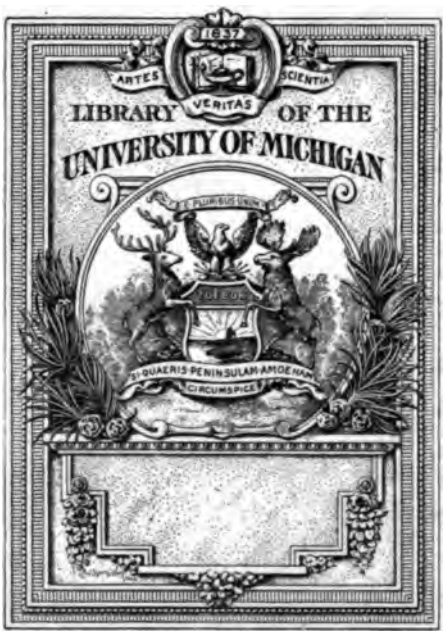

THE GIFT OF
Supt. Pub. Doc.

5257

60TH CONGRESS : : 1ST SESSION

DECEMBER 2, 1907-MAY 30, 1908

SENATE DOCUMENTS

IN 36 VOLUMES

VOL. 24

WASHINGTON : : GOVERNMENT PRINTING OFFICE : : 1908

60TH CONGRESS } SENATE { DOCUMENT
1st Session } { No. 413

CORRESPONDENCE

RELATING TO

WRONGS DONE TO AMERICAN CITIZENS BY THE GOVERNMENT OF VENEZUELA

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, IN RESPONSE TO A SENATE RESOLUTION OF FEBRUARY 26, 1908, TRANSMITTING A REPORT OF THE SECRETARY OF STATE, SUBMITTING THE CORRESPONDENCE WITH THE GOVERNMENT OF VENEZUELA IN RELATION TO PENDING CONTROVERSIES WITH THAT GOVERNMENT CONCERNING WRONGS DONE TO AMERICAN CITIZENS AND CORPORATIONS IN THAT COUNTRY BY SAID GOVERNMENT

MARCH 31, 1908.—Read; referred to the Committee on Foreign Relations and ordered to be printed

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

To the Senate:

In response to a resolution of the Senate, dated February 26, 1908, requesting the President—

> if not incompatible with the public interest, to communicate to the Senate the correspondence with the Government of Venezuela in relation to pending controversies with that Government concerning wrongs done to American citizens and corporations in that country by said Government—

I transmit herewith a report by the Secretary of State, with accompanying papers.

Respectfully submitted.

THEODORE ROOSEVELT.

THE WHITE HOUSE,
March 31, 1908.

206547

THE PRESIDENT:

Pursuant to the following resolution of the Senate, dated February 26, 1908:

Resolved, That the President be requested, if not incompatible with the public interest, to communicate to the Senate the correspondence with the Government of Venezuela in relation to pending controversies with that Government concerning wrongs done to American citizens and corporations in that country by said Government,

I submit herewith:

1. Memoranda of the law officer of the Department, dated May 24, 1906, covering the following claims against the Government of Venezuela, namely: Claim of A. F. Jaurett, claim of the Orinoco Corporation, claim of the Orinoco Steamship Company, claim of the United States and Venezuela Company, and claim of the New York and Bermudez Company.

2. Reports of Hon. W. J. Calhoun, special commissioner to Venezuela, dated January 29, 1906, and November 22, 1906, respectively, in the cases of (*a*) the New York and Bermudez Company and (*b*) the United States and Venezuela Company.

3. Diplomatic correspondence between the Governments of the United States and Venezuela, comprising the instructions of the Department to the American legation at Caracas, and the dispatches, including inclosures, from the legation to the Department.

Respectfully submitted.

ELIHU ROOT.

DEPARTMENT OF STATE,
Washington, March 27, 1908.

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DEPARTMENT OF STATE,
Washington, March 27, 1908.

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MEMORANDUM.

MAY 24, 1906.

During the months of September and October, 1904, there were rumors in Venezuela that a revolution was about to take place, and several prominent men of Caracas, and large numbers of others throughout the Republic, were incarcerated on suspicion of being connected with the scheme to overthrow General Castro. (Dispatch No. 330 from Caracas, September 26, 1904.)

On the 15th of October, 1904, an article appeared in the New York Herald, dated at Washington, which stated that according to private advices received a formidable revolution against President Castro was imminent, that Venezuelan army officers were arranging the uprising, that hundreds of arrests had been made to check the movement, and that large numbers of persons were fleeing from towns and cities to the country in fear of imprisonment.

The issue of the Herald in which this article appeared arrived in Venezuela on October 24, and the following morning El Constitucional, the principal newspaper of Caracas, printed an editorial denying the report in the Herald and demanding a reply from Mr. A. F. Jaurett, a naturalized American and correspondent of the New York Herald, as to whether he was guilty of sending the false report. Mr. Jaurett denied responsibility for the article in an editorial the following morning, and also telegraphed the Herald that it was entirely false and requested them to rectify, which was done in the Herald of October 27, copies of which arrived in Caracas on November 9.

In his dispatch, No. 343, of October 26, 1904, transmitting documents from which above information was received, Mr. Hutchinson, chargé, stated that " it is possible that the Government here is trying to get rid of Mr. Jaurett's presence in this country."

The action of Mr. Jaurett in denying responsibility for the false report and in directing the Herald to rectify it appeared to be satisfactory to the Venezuelan press and the incident was thought to be closed. However, in the Official Gazette issued Saturday evening, November 12, 1904, a decree was published, signed by Provisional President Castro, ordering Jaurett's expulsion from Venezuelan territory, giving as the reason therefor that he was " notoriously prejudicial to public order," and citing clause 22 of article 80 of the national constitution as the authority under which the decree was issued. This portion of the constitution, which appears in Section IV of Title VI, enumerating the powers of the Federal Executive, reads as follows:

> To forbid, when so deemed expedient, the admission into the national territory, or to repel therefrom, foreigners who have no *established domicile* in the country.

The following morning, Sunday, at 8.20 a. m., the prefect of police called upon Mr. Jaurett at his residence and ordered him to repair immediately to the governor. Mr. Jaurett accordingly called upon the governor, who, through his secretary, acquainted him with the decree of expulsion and formally ordered him to quit the territory of Venezuela in twenty-four hours, giving as his reason for so drastic an act that it was "by order of higher authority."

On leaving the governor, Mr. Jaurett, in company with Mr. Hutchinson, the American chargé, with whom he had communicated by telephone, called at the residence of the minister for foreign affairs, and the chargé asked if he could not arrange that Mr. Jaurett should have until the sailing of the steamer leaving one week later, as it would take Mr. Jaurett several days at least to settle his business and private affairs, which had grown to quite a great extent since his arrival in the country, some eight years before. The minister was surprised to learn of the expulsion, although Mr. Jaurett was consul of Panama and should have had his exequatur revoked by the minister before the expulsion. The minister promised, however, to see the minister of the interior. Later the minister for foreign affairs called on Mr. Hutchinson and informed him that the respite could not be granted, and added that his Government had accumulated a great deal of proof against Jaurett in the matter of sending telegrams abroad which were prejudicial to the good order of the country. In the meantime, Jaurett had telegraphed President Castro, who had left the day before for a distant point in the country, asking a week's delay, in consideration of the valuable services rendered the Venezuelan Government during the blockade period in 1902. After Chargé Hutchinson's efforts with the ministers had failed, he also sent a telegram to President Castro asking if he could not concede Mr. Jaurett until the 21st of the month for the settlement of his affairs, but President Castro failed to reply to either Mr. Jaurett or Mr. Hutchinson. (See dispatch from Caracas, No. 357, November 13, 1904.)

The events following the unsuccessful attempts to get an extension of time are related by Mr. Jaurett in his letter to the Department of December 2, 1904, as follows:

> Time was pressing, and seeing I could obtain no delay, at 1 p. m. I went about as one demented, endeavoring to purchase trunks in which to pack my clothing and such effects as I could take with me. But all stores were closed, it being Sunday, and had it not been for the kindness of two foreign ministers and some personal friends who placed trunks at my disposal, I would have been compelled to abandon everything. On the day following, at 7.30 a. m., followed by the police, I was on my way to the railway station, where I was met by nearly all the diplomatic corps; an hour later I was journeying toward the United States, leaving behind me, to my regret and against my will, a residence, filled with works of art, which I had occupied for eight years, interests of all kinds, a newspaper office, funds in bank, etc. In short, a cyclone falling suddenly upon a homestead could scarcely have had more disastrous effects than had this decree of Provisional President Castro in forcing me to leave Venezuela within twenty-two hours.

Mr. Jaurett called personally at the Department about the 29th of November, 1904, and as the result of his interview the Department, on November 29, telegraphed Mr. Hutchinson as follows:

> It is represented that Albert Felix Jaurett, an American citizen, expelled from Venezuela by Executive decree. The expulsion appears to be contrary to Venezuelan constitution and international law. Further represented that Mr.

Jaurett has been damaged in person and property in the sum of $25,000. Advise Venezuelan Government that if facts are substantially as represented the United States Government will expect prompt payment of full indemnity.

This telegram was confirmed by the Department's letter of December 1, 1904, reading as follows:

Confirming the Department's telegram of the 29th ultimo, I have to say that Mr. Albert Felix Jaurett, an American citizen since August 6, 1894, represents to the Department that he was, on Sunday morning, November 13, 1904, expelled from Venezuela by Executive decree, a printed copy of which is filed with the Department. By the terms of this decree he was expelled by the Executive in pursuance of clause 22 of article 80 of the constitution of Venezuela. The decree assigns no specific reason for the expulsion and upon its face appears to be wholly arbitrary, as it is clearly unauthorized by the mentioned article of the constitution under which the decree of expulsion purports to have been passed. Mr. Jaurett represents that he has lived in Venezuela since March, 1896, till November 14, 1904, when he left Venezuela in obedience to the command of the said decree on the vague, intangible ground that he was notoriously prejudicial to the public order. He represents that during the entire period of his residence in Venezuela he was involved in no litigation of any kind, nor in any dispute or controversy with the authorities; that he never intermeddled in Venezuelan politics, and that he at all times yielded loyal obedience to the laws and authorities of Venezuela. He further represents that he founded the Venezuela Herald at Caracas in 1896; that it was a valuable property; that he published and managed the business of the newspaper in his own person, and that the suspension of the publication was involved in and followed his own expulsion; that he was also engaged in other valuable businesses, as agent of the Associated Press, as representative of the Reuter Telegram Company, and as agent of the committee of foreign bondholders, all of which businesses, as well as other valuable business employments, have been lost to him by reason of his expulsion; that on Sunday morning, November 13, 1904, a Venezuelan official called and asked him to go and see the governor; that he accordingly went, in company with the American chargé, and thereupon the governor ordered him to leave the country in twenty-four hours; that he, Jaurett, represented to the governor that he could not, on Sunday, withdraw his money from the bank nor collect his bills and pay his debts, and in response thereto the governor informed him that there was no explanation to be given and that he, Jaurett, must leave the country; that, accordingly, at half-past 7 o'clock next morning he was compelled to leave Venezuela, abandoning his house and its valuable contents and all of his other interests and businesses, and was compelled to sell certain securities which he held at large sacrifices, his loss thereon approximating $4,000, and that by his other losses growing out of his expulsion and the suspension of his newspaper and from the loss of his valuable employments, and by the indignity inflicted upon him as a citizen of the United States and the violation of his personal rights and liberties, he has been damaged in the sum of $25,000.

As the matter is represented to the Department, Mr. Jaurett appears to have a just claim for indemnity against Venezuela. You will, accordingly, present the claim to the minister for foreign affairs and say that if the facts are substantially as represented, the Government of the United States expects from the Government of Venezuela the prompt and full indemnification of Mr. Jaurett for the wrongs and injuries which he has sustained from the arbitrary and illegal action of its Executive authority.

On December 2, 1904, Mr. Jaurett submitted a lengthy memorial covering the facts which he had communicated personally to the Department, the substance of which is embraced in the above-quoted instruction to Mr. Hutchinson, and in addition gave the following as his view of the reason of his expulsion:

The true cause of my expulsion is that I was the only person in Venezuela under Castro's régime who has dared to at least utter a complaint in favor of American interests, placing always my news agency at the disposal of those unfortunate companies. Moreover, having lived in close contact with these Venezuelan officers, I was perfectly acquainted with all their political tricks, their system of blackmail against foreigners, their habit of granting concessions only to withdraw them later, and I was thereby able to give timely warning to

the investors sent me by the various legations. This state of affairs was well known to the Government, and it was equally well understood that I was not to be trifled with. Seeing that their game was blocked, they resolved to get rid of me at any cost. It is but a short time since they endeavored to compass the assassination of my colleague, Stephen Bonsal, living at my home, who escaped as by a miracle. Warned of the fate which awaited me, I no longer went out after dark except under the escort of a negro of Martinique, who was wholly devoted to me. This alone permitted me to avoid the fate they had in store for me.

Therefore, not daring to openly murder me, my expulsion was determined on, and, under the flimsy pretext of the article in the New York Herald, the scheme was carried out.

In accordance with the Department's instructions, Mr. Hutchinson presented the claim to the minister for foreign affairs on November 30, 1904, and received the following reply on December 6, 1904 (dispatch No. 374, December 11, 1904, from Caracas):

I have the honor to inform you that I have brought to the notice of the Provisional President of the Republic the communication which you sent me concerning the indemnity to which the named Albert Felix Jaurett aspires, and that I have received instructions from the above magistrate to give you the following answer:

The above-mentioned Jaurett, who lived here as a French citizen and who according to your note appears to be of American nationality—perhaps because he has been naturalized in the United States—has taken part in the political questions of the country during the time he remained here.

As the most sound doctrine of international law teaches, such action is enough to cause a loss of diplomatic protection which legitimately either France or the United States might have accorded him. Further, the conduct and the doings of the said Jaurett were an infringement of article 6 of the law of foreigners of April 11, 1903, and made applicable the proceedings which article 7 of the same law establishes.

As to the indemnity to which you refer, it is without doubt the Republic which has grounds for demanding it of Jaurett—in no case the already-mentioned individual from Venezuela. The claim which Venezuela has the right to bring against him amounts to many accounts of thousands of dollars, because of the grave prejudices which up to to-day he has occasioned the Republic by his false and alarming reports sent by him to many papers of Europe and North America.

Articles 6 and 7 of the law of foreigners referred to read as follows:

ART. 6. Foreigners domiciled or in transit must not mix in the political affairs of the Republic nor in anything relating to said political affairs. To this end they can not—

1. Form a part of political societies.
2. Edit political newspapers or write about the interior or exterior policies of the country in any newspaper.
3. Fill public office or employment.
4. Take arms in the domestic contentions of the Republic.
5. Deliver speeches which in any way relate to the politics of the country.

ART. 7. Domiciled foreigners who violate any of the provisions established in article 6 lose their character of foreigners and become ipso facto subjected to the responsibilities, burdens, and obligations which might be occasioned to natives through intestine political contingency.

The purport of the above reply was telegraphed the Department on December 7, 1904, and on the following day Mr. Hutchinson was informed that the answer of the minister for foreign affairs was entirely unsatisfactory in point of fact and he was instructed to press for immediate payment of the indemnity. In its letter of December 9, 1904, confirming the above telegram, the Department added:

The Department is surprised at the statement made by the Venezuelan minister of foreign affairs, as it has abundant evidence as to the American citizenship of Mr. Jaurett, and has excellent ground for believing that he did not participate in the politics of the country. On the contrary, it is a matter of common knowledge that he rendered very valuable service to Venezuela dur-

ing the period of the blockade, and that he has done much to call attention of foreign investors to its resources. It is also recalled that when he was appointed consul of Panama he was promptly and cheerfully given an exequatur by the Venezuelan Government, and that this exequatur up to the time of his expulsion had not been withdrawn.

After several personal visits to the minister for foreign affairs in which he was pressed for immediate action, Mr. Hutchinson received the following note, dated December 14, 1904:

I have submitted for the consideration of the Provisional President of the Republic your excellency's communication of the 9th instant by which the United States Government insists upon the recognition and payment of damages which Mr. Jaurett says were occasioned him by his sudden expulsion, which expulsion was caused by Mr. Jaurett himself.

The reasons expressed to the Government of the United States for not admitting the solicitude which has been made in regard to the expulsion of Mr. Jaurett fully justify the proceedings of the Executive and at the same time clear and define the situation absolutely.

The Republic can not admit the pretension of a foreigner, obliged by numerous reasons to observe the most strict neutrality in our internal political affairs, to ask and make effective the protection of his government after having violated that duty. The contrary would create a source of damages and would expose the State to the most serious dangers. The stranger that for any reason whatsoever should mix in matters that only the natives have the right to discuss; the stranger that tries to alter or destroy the existing order in the nation where he resides; the stranger that systematically hostilizes the authorities which he must respect, places himself, regarding diplomatic protection, in the situation identical to that of the natives who usurp these rights and faculties in a manner so reproachable and illicit. Proceedings and acts of this nature can not but deprive the foreigner of his condition of neutral and of the right of being protected by the nation to which he belongs. Otherwise, always shielded, and without any consideration, backed by a power which only has to protect lawful rights, the stranger would make strong his impunity, and against all rules and all principles would make an associate of his faults the State to which as a citizen he owes obedience.

It is not known to what extent the so-called Jaurett has adhered to the American laws relative to the naturalization of foreigners; it is said that after having abandoned his native country, for reasons in which justice had to intervene, he went to Panama and afterwards to Mexico, which country he left to take refuge for a short time in Florida, where he resided for a few months before coming to Venezuela. But, be what it may, his foreign nationality, far from authorizing him to behave here in the manner in which he did, imposes upon him an entirely different behavior. In this respect, I think it well to recall that which, under date of April 25, 1882, was said to Mr. Lowell by the Secretary of State, Mr. Frelinghuysen: "Its assumption [American citizenship] implies the promise and the obligation to observe our laws at home, and peaceably as good citizens to assist in maintaining our faith abroad, without efforts to entangle us in internal troubles or civil discord, with which we have not, and do not wish to have, anything to do."

How the person in question has observed the obligations that his American citizenship demanded of him is a question which, without much difficulty, will be answered by the correspondence and dispatches that the information agencies and European and American newspapers, in whose service he was, published continually about Venezuela.

In the same way could answer all the persons who knew him here in Caracas, persons to whom it is no mystery or secret the diligence with which he used to go back and forth inventing false news of conflicts, spreading alarms, putting into the mouths of representatives of foreign nations and high authorities of the State ideas and information which they never said or expressed. More than once the credit of the nation and the usual transaction of the commerce were at the point of being seriously altered, with great losses to everybody, in consequence of the intrigues of Jaurett; more than once the good name of the country has been outraged by him in his communications.

The government would have not done its duty if it had not expelled from the bosom of the community such a dangerous person, and would have been

guilty of negligence if it had permitted Jaurett to continue encouraging discord and giving rise to disturbances.

The sacrifices which the Republic is undergoing to keep unaltered public order are well known, crushing all attempts at insurrection, and if, in accordance with the most sacred impositions of its administration, the Government punishes the intrigues of those citizens who undertake to disturb the peace it is not understood for what reasons foreigners shall be exempted from responsibilities when they are employed in the same illegal work.

The Executive believes that nothing authorizes him to make any distinctions, and the Government of the United States itself would have to acknowledge it, because logic recommends it, and because that has been its way of procedure in similar circumstances. So much that, when the diplomatic representative of England in Washington asked the liberty of the so-called Francis Carroll whom the authorities (military) of Baltimore had arrested, the Secretary of State, Mr. Seward, answered him in the following words: "Can it be hoped that the Government of the United States should crush the treason in arms, and leave, nevertheless, at liberty persons capable of diffusing a popular commotion? The Government could not with certainty hope to sustain itself if it would permit American citizens such injurious liberties. Could there be any difference when the dangerous person is a foreigner who lives under the protection of the Government? But one reason could be considered as conceivable for setting this person at liberty, namely, that he is a person too insignificant and too passionate to attract attenion by his actions against the Government."

Moreover, you must bear in mind that in this critical time insurrection is easily moved by ill-intentioned men who in time of peace would be despised.

It could be gathered thus, from all that is said above, that the answer, which by order of the Provisional President I transmitted you under date of the 6th instant, is fully justified. To finish and return to the point relative to the diplomatic protection in Jaurett's case, it is well to make manifest that the rules and principles adopted by the Government of the Republic do not differ at all from those so admirably formulated by the Secretary of State, Mr. Webster, in his communication to Mr. Peyton under date of January 6, 1842: "A citizen of the United States who finds himself in a foreign country and takes part in attempts against its Government has lost thereby his rights of protection from his own Government."

The dispatch No. 375, December 17, 1904, inclosing the above note was acknowledged to Mr. Bowen on January 5, 1905, the Department adding that it "hopes you will continue to press the matter upon the attention of the Venezuelan Government."

With his dispatch No. 374 of December 11, 1904, Mr. Hutchinson forwarded translation of an article printed in El Constitucional, which purported to have been written at Washington, giving an account of the expulsion of Jaurett, and adding:

He was a French citizen, and an officer of the army, deserting from France on account of suspicious monetary irregularities with the troops. He went to Panama at the time of De Lesseps, and when the company failed he ran away with its money. From there he went to Mexico, representing the Five Title Company of Paris, which he defrauded out of $40,000 and gambled away all the proceeds. He also defrauded other individuals. He escaped from Mexico, where he was criminally condemned. With all these antecedents, Jaurett will not have much to plead in his favor.

Commenting on this newspaper report, Mr. Hutchinson remarked:

It seems that most if not all of the foreign representatives here disliked or feared Jaurett, and that they give credence to the charges against his good name. These charges have been confirmed by M. Wiener, the French minister, who was in Mexico when Mr. Jaurett was. M. Wiener, I believe, has spoken to Mr. Bowen about Mr. Jaurett's reported doings in Mexico.

The Department, on December 27, 1904, informed Mr. Jaurett of the charges made by the minister for foreign affairs in his reply of December 14, and stated that it would be disposed to consider any

answer he may make thereto in order that the same may be communicated to the Venezuelan Government. Pertinent extracts of the reply of Mr. Jaurett are quoted below (see his letter to Department of January 17, 1905):

In reply, allow me to state that, firstly, I was never registered at the French legation, but was, on the contrary, registered on the books of the United States legation as an American citizen a few days after my arrival in Venezuela in 1896. This statement can be corroborated by your Department in cabling to the French and American legations at Caracas. * * *

As for the report that I took part in political questions, this is also false. I never mixed in active politics, and was until a few months ago persona grata with the Venezuelan Government. In September last I received the exequatur of consul of Panama from the Venezuelan Government; so if four months ago I was persona grata, how is it possible that in time of peace, when no revolution was pending, I should be accused of meddling in politics? The Venezuelan Government can not present proofs, written or otherwise, of their accusation.

As for the report that Venezuela suffered grave prejudices by false reports sent out by me to American and European papers, I will say that I was not the author of the news published in the New York Herald dated from Washington November 15, and which was the cause of my expulsion. The State Department knows the author of this cable. During the past six months I have never cabled to the Associated Press, Reuter's Telegram Company, or to the Sun, and as for the other reports published relative to the policy of Castro, I can only echo the public opinion that it is Venezuela herself who has written her own history, and that I, impartial writer, have contented myself by relating it.

Allow me also to add that I have learned through my secretary that the Venezuelan Government has covered me with reports still more false and grave touching my character. I beg to state that on my return to Washington I will have the honor to show you testimonials proving the falsity of these accusations.

In compliance with the Department's telegram of January 6, 1905, Mr. Jaurett, on January 19, 1905, forwarded his naturalization papers, and they are now on file in this office. He also forwarded, on January 27, 1905, a testimonial from the French legation at Caracas, stating that Jaurett had never been registered there among the French residents in Venezuela, and also forwarding at the same time a letter from M. Charles Wiener, the French minister to Venezuela, in which Minister Wiener denies having corroborated the statement published against Jaurett, adding that the facts imputed to Mr. Jaurett's discredit are absurdly defamatory. The Department received a further letter from Mr. Jaurett, dated February 4, 1905, inclosing a letter which was received by him from Richard Guenther, United States consul-general at Frankfort, Germany, stating that Jaurett was known to Guenther during the years 1890, 1891, 1892, and 1893 in the City of Mexico, where he (Guenther) was United States consul-general.

No further action appears to have been taken toward the settlement of this question since the letter to Mr. Bowen of January 5, 1905, heretofore referred to.

STATEMENT OF THE LAW.

From all the facts as set forth in the memorandum, it appears to admit of no doubt that Mr. Jaurett is entitled to an indemnity against Venezuela for his expulsion. It is not contended, for it can not be seriously contended, that a sovereign nation may not expel an undesirable alien. The act may be deemed as high handed, but self-preservation may demand it, and if invoked overrides the provisions of law. It must not be overlooked, however, that this doctrine, while universally admitted, is nevertheless subject to limitation; otherwise citizens in foreign parts would be at the mercy of any and every government. International law, as will be seen, restricts or limits the exercise of the right of expulsion. The law of Venezuela forbids a Federal Executive to expel domiciled foreigners, and defines domiciled foreigners to be those who have resided for more than two years within the country. Inasmuch as Mr. Jaurett had lived for more than two years within Venezuela, had complied with all the rules and regulations concerning foreigners, the law of Venezuela protected him against expulsion by the Federal Executive.

It is too late in the day to argue that a sovereign state may not prescribe the terms and conditions upon which a foreigner may enter its territory. It may also determine the conditions upon which the foreigner may remain within its jurisdiction. This is an attribute of sovereignty. From this sovereignty follows, naturally, that sovereign states are equal, and it necessarily results that one state may not intervene in the internal organization of a sovereign, independent, and equal state. It is for the state to regulate its household. This is settled doctrine in the United States.

The power of the Government of the United States to exclude foreigners from the country whenever in its judgment the public interests require such exclusion has been asserted in repeated instances, and can neither be granted away nor restrained even by treaty. Whether a proper consideration of previous laws or a proper respect for the nation whose subjects are affected ought to have qualified the inhibition are not questions for judicial determination. If there be any just ground of complaint on the part of the foreign government it must be made to the political department, which is alone competent to act upon it. (The Chinese Exclusion Case, 1889, 130 U. S., 581, 606–611.)

It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. (Vattel, lib. 2, secs. 94, 100; 1 Phillimore, 3d ed., c. 10, sec. 220.) In the United States this power is vested in the National Government, to which the Constitution has committed the entire control of international relations, in peace as well as in

war. It belongs to the political department of the Government, and may be exercised either through treaties made by the President and the Senate, or through statutes enacted by Congress. (Nishimura Ekiu *v.* United States, 1892, 142 U. S., 651, 659. See also Knox *v.* Lee, 12 Wall., 457; Fong Yue Ting *v.* United States, 1893, 149 U. S., 698.)

The authority of Congress to take away from an alien any right given by previous laws or treaties to reenter the country can not be questioned, although it is the duty of the courts not to construe an act of Congress as modifying or annulling a treaty made with another nation, unless its words clearly and plainly point to such a construction. (Lem Moon Sing *v.* United States, 158 U. S., 538, 1895, citing Chew Heong *v.* United States, 112 U. S., 536, 539, 559; Head Money Cases, 112 U. S., 580, 599; Whitney *v.* Robertson, 124 U. S., 190, 195; Chinese Exclusion Case, 130 U. S., 581, 600.)

The power to forbid entrance to foreigners necessarily includes the right to expel, for the reason of the thing is the same in each case. We forbid the foreigner to enter because his presence in our country is undesirable. He is expelled for the same reason. Sovereignty and the exercise of sovereign power control. A recent example of this sovereign power to exclude classes of aliens from the United States is to be found in the act of March 3, 1903 (32 Stats., 1213), which excludes anarchists from the territories of the United States. In Turner *v.* Williams (1904, 194 U. S., 279) the Supreme Court of the United States held that it was constitutional and declared the power to expel inherent in sovereignty. In the same way Great Britain has held under international law, as well as by statute, that an alien has no legal right, enforcible by action, to enter British territory. (Morgrove *v.* Chung Teeng Toy, 1891, L. R. App. Cas., 272.)

While, however, the right to expel as well as a right to prevent entrance must necessarily exist and coexist in a sovereign nation, in the United States such prohibition or such expulsion can only exist in pursuance of general laws permitting and prescribing such action.

For the general question and the recognition of the right as exemplified in American diplomatic correspondence, see Moore's International Law Digest, Volume IV, pages 68–96.

Repeated decisions of the Supreme Court and no less repeated instructions of the Department of State recognize and regulate the right of expulsion, and we can not well deny to a foreign and sovereign nation the right which we both claim and exercise.

As far as municipal law and the practice of the Department of State are concerned, we might rest here. As, however, the right to expel is not merely a right recognized by the municipal law, but sanctioned by the fundamental principles and practices of international law, it is necessary to consider the subject in the broader and international aspect. Perhaps this right and its fundamental nature is nowhere better expressed than in the following paragraph from a recent and authoritative work on international law:

Each sovereign state is free to prescribe the conditions upon which aliens may enter and reside within its territory. The right of nonadmission, as of expulsion, is a direct consequence of territorial sovereignty. A nation may subject the residence of aliens within its territory to exact and determined conditions. May it interdict completely immigration? May it close its territory absolutely to the alien? China and Japan long observed this policy. Europeans obliged them to conclude treaties opening certain ports and permitting the access of aliens to certain provinces. This was, however, the employment of force; not the application of law.

A state has the right to expel from its territory aliens, individuals or collectively, unless treaty provisions stand in the way. In ancient times, collective expulsion was much practiced. In modern times it has been resorted to only in cases of war. Some writers have essayed to enumerate the legitimate cause of expulsion. The effort is useless. The reasons may be summed up and condensed in a single word, *the public interest of the state.* Bluntschli wished to deny to states the right of expulsion, but he was obliged to acknowledge that aliens might be expelled by a simple administrative measure. (French law of December 3, 1849, arts. 7 and 8; law of October 19, 1797, art. 7.) An arbitrary expulsion may nevertheless give rise to a diplomatic claim. (Bonfils, Manuel du Droit Int. Public, secs. 441, 442.)

Notwithstanding the statement of Bonfils as to the uselessness of an enumeration of legitimate causes of expulsion, the following citations from writers of authority will show how widespread is the recognition of the right and how thoroughly international law restricts its exercise within certain clearly defined lines.

Fiore, in his Noveau Droit International Public (Paris, 1885), section 699, says:

We ought to consider as contrary to the respect due to the personal liberty of the alien the authority given to the administrative power to expel him from the state, without admitting that its decisions could be controlled by the judiciary authority on the demand of the interested party. We certainly could not deprive the sovereignty of the right to take seasonable dispositions to prevent the alien from compromising the public security and subject him to repressive measures in case he should violate hospitality. But out of respect to individual liberty, it is necessary that the expulsion should not be decreed by the executive power as an ultrasummary and discretionary measure, because we should thus see realized the inconvenience of remediless attacks on individual liberty. The greatest portion of modern legislation has, without regard to this inconvenience, sanctioned the principle that the expulsion of the alien is a measure of high police, and that the executive power can expel, without control, persons who compromise the public tranquillity.

Bluntschli, in Le Droit International Codifié (Paris, 1881), says, article 384:

When a government interdicts without reason the admission into its territory of a stranger duly authorized or expels him without cause and with offensive forms, the state of which this alien is a citizen has the right to complain against this violation of international law and to demand, if necessary, satisfaction.

Pradier-Fodéré, in Droit International Public, volume 3 (Paris, 1887), sections 1857–1859, says:

The question of the expulsion of aliens is one of those about which the law, such as it is, is the farthest removed from the law as it should be. * * * This power of compelling an alien to depart the country, causing him, if need be, to be conducted to the frontiers, results directly from the right of sovereignty. In vain will one question this power by alleging that human liberty is the most sacred of natural rights; that its complete development is not limited by the frontiers of the country of which one is a citizen; that it is contrary to the principles of law and of the treaty interests of peoples to fetter the entire freedom of the permanent relations between citizens of different states; that expulsion is a punishmet, and that one can not punish an individual who has not been recognized guilty; that the state which thinks it has a ground of complaint against an alien will act more equitably by prosecuting him judicially, and in thus bringing to light his innocence or his guilt. The triumphant answer always will be in demonstrating that the right to abide freely in any place can, like all rights, be restricted in the general interest of the political association, and that as regards individuals who, failing in the duties of hospitality, are for the state which receives them, for the society which receives them, an object of disquietude, a permanent cause of danger or of scandal, the state is not required to be generous to the extent of imposing upon the public administration the obligation to watch over them in order to

prevent their criminal actions. The right of providing for the safety and the conservation of society, and of decreeing measures of high administration and of police, is one of the essential tributes of sovereignty. No state could renounce the right of expulsion with which it is armed without compromising by this abandonment the interests which are confided to it, and which it is its duty to protect. Thus, it will be observed with justness that the treaties and declarations by which a government stipulates for its citizens the right of sojourn, of acquiring real estate, of following an industry upon a foreign territory, ought not to be interpreted as involving a renunciation on the part of the other contracting power of the right to expel aliens whose conduct should make it desirable. But the exercise of the right ought not to be abused. There are two reflections of Vattel which cover all that can be said on this subject. Speaking of the dangers which certain aliens might cause to a state, "A nation," says he, "has the right and is even obliged to follow in this respect the rules of prudence; but this prudence ought not to be suspicious nor carried to the point of refusing an asylum to unfortunates for light reasons and for unfounded or frivolous fears."

* * * * * * *

The administrative authority will alone determine the public necessities which can justify the expulsion to be made, and will be able to set forth the reasons of this measure to the government of the country to which the expelled individual belongs, if this government, as it may rightfully do, demands an explanation; thus it is with the reason that according to the jurisprudence of the council of state and of the court of cassation, the ministerial decree which pronounces the expulsion of the stranger is considered in France as constituting a measure of police and of public order, an act of Government of which the legality transcends the competence of the judiciary authority. But the competence of the administrative authority does not exclude control and would not justify arbitrariness. The expulsion, whether it is limited to an individual or is applied to an entire category of persons, is legitimate only so far as it is demonstrated with evidence that the presence of those whom it affects imperils the peace within or without, the security of the governors or of the governed—that, in a word, it compromises one of the interests which the State guards. It is necessary that the danger be certain, that the menace be effective; the administration ought not to be able to recur to this harsh measure except so far as the condition of the individuals who are the object of it inspires real and well-founded disquietude either in the inhabitants of the country or in the government itself, or, perhaps, even in a friendly government. De Bar has said, without exaggeration, that the universal conscience protests against the arbitrary use of the right of expulsion.

The Journal du Droit International Privé for 1886, volume 13, contains, on page 1 and following, the report of a careful study given to the question of the expulsion of foreigners by Professor von Bar, from which the following passages are quoted:

What one calls the right of dismissal ought not to be considered as an unrestrained right of the State; otherwise international relations would become impossible. The State is absolute master neither of its soil nor of those who inhabit it.

He quotes the above from Bluntschli, and then comments:

The learned professor of Heidelberg does not dispute that in certain circumstances the State is justified in refusing to foreigners admission to its territory or in expelling them. He limits himself to maintaining that the use of such a power ought to be limited to exceptional cases rigorously justifiable and ought not to be contrary to the principles of the law of nations nor to international necessities or habitudes.

He also quotes from Heffter on the Law of Nations, as follows:

No State can remove from its soil the subjects of another State whose nationality is duly established, nor expel them after having received them, without having good reasons for so doing, which it is bound to communicate to the government of which they are subjects.

He continues:

The State which resorts to expulsion ought to invoke reasons of a nature to justify it. The expulsion ought to be conformable to the traditions and to the principles of the law of nations. * * * No State is obliged to tolerate upon its soil the presence of an alien so forgetful of the duties of the hospitality which he enjoys as to render himself guilty of a grave offense. Obedience to the local laws is the condition of his admission, and the benefit of this admission may be withdrawn even in a case where the delict which he is charged with may not be repressed by them, as being directed not against the territorial sovereignty, but against a friendly power. Then, indeed, if no punishment is visited upon the delinquent it is only because the State, or at least those who represent it, do not believe that they are in condition to render a judgment sufficiently justifiable by the circumstances, of a political order, which have called forth their exercise in regard to the criminative fact. Still it is necessary in any event, in order to give ground for an expulsion, that it be proven, or at least rendered probable in the highest degree, that it contains elements of a grave and real violation of the law or of an attempt to commit it, or that an act blameworthy in itself be done by way of preparation.

In his footnotes to this text he says:

But absolutely decisive proof is not indispensable in this matter, for it is a question of general safety. Thus, the mere preparation for a crime of any gravity would be a sufficient cause for an expulsion.

He further says:

Bluntschli declares it as a principle in his section 384 that the arbitrary and unjustifiable expulsion of a foreigner may be the point of departure of diplomatic reclamations on the part of the State of which he is a citizen. This point is above all controversy.

In another of his footnotes he says that—

It is not a complete justification of the expulsion from the point of view of international law to pretend that it was not an act directed against the government of the state to which the individual expelled belonged.

In another note he illustrates the general doctrine thus:

An analogy borrowed from the criminal law will suffice to make it clear. I am not obliged to tolerate the presence of anyone in my house; but when, after having specially invited a person to come there, I expel him without reason I incur a responsibility. It is the same way with the innkeeper who offers in a general manner his house to his patrons and who drives one of them out of it without reason.

This note is explanatory of his text, which reads thus:

In our opinion the foreigner has a real right to sojourn within the territory of another state than that to which he belongs, at least when he has been admitted there or when he fulfills the conditions on which the laws make his admission depend. Nevertheless, outside the case of an infraction of a diplomatic treaty, the power whose subjects have been unjustly expelled can only demand by force the satisfaction which its peaceful reclamations have been unable to obtain. This grows out of the fact that the nature and extent of the right of the alien have not been formulated down to the present time with sufficient precision.

In the Revue de Droit International, volume 20, page 498, is contained a report by Rolin-Jacquemyns on the right of expulsion of aliens. The question was stated thus: "In what manner and within what limits may governments exercise the right of expulsion against foreigners?" The following passages are quoted:

The right to prohibit the admission into a territory or to exclude from it every individual who is an alien to the political community is a direct consequence of territorial sovereignty. * * * But in regard to the principle of territorial sovereignty, there are other principles which tend not to nullify it but to restrict its exercise, and upon which principles it is desirable that a body of positive rules be established. The first of these principles is that every

state forms a part of the community of nations of which the whole makes up humanity. As such, it is not permitted it to isolate itself nor to isolate its territory from all contact with the rest of the world. In acting thus it would place itself outside the law and outside the community of nations and would expose itself to an expropriation in the cause of humanitarian interests. The consequence of this principle is that a state can not interdict in an absolute manner to all strangers access to its territory, nor expel indiscriminately or en masse all those who are found there. * * * Besides these general duties toward humanity and toward the community of states there are some particular duties which are applicable to the exercise of the right of expulsion and which are founded upon the fact that the individual expelled has the double character of a man and of a citizen. In his character as a man he has the right not to be the object of undue severity nor to be injured unjustly in his interests. In his character as a citizen of another state he can claim the protection of his sovereign against these severities or these spoliations. The state which expels, acting thus in virtue of its own sovereignty, is the sole judge of the motives which determine the measure. It does not follow that these motives may be indifferent nor that the right of expulsion can be the pretext of arbitrary violence.

In concluding his report he states:

From the point of view of international law, every government of a sovereign state has, as a general rule, if it judges it necessary in the interest of this state, the right to admit or not to admit, to expel or not to expel, foreigners who wish to enter, or who are found upon its territory, as well as to subject their admission or their residence to the conditions which it judges necessary in the interest of its tranquillity or of its security. The exercise of these different rights is, however, subject to the following restrictions.

Among which he states the following:

1. No state can, without placing itself outside the pale of international law, interdict in an absolute manner the access of all strangers to its territory nor expel indiscriminately or en masse all those who are found there.

* * * * * * *

4. The right of expulsion and the mode of exercise of this right may be regulated by international treaties.

5. But in the absence of treaties the state to which the expelled individual belongs has the right to know the motives of the expulsion, and the communication of these motives can not be refused to it. Moreover, the expulsion ought to take place with all the considerations which are demanded by humanity and the respect for acquired rights. Save in urgent cases, a reasonable time ought to be allowed to the expelled individual to settle his interests. Finally, except in cases of extradition, he ought to be left to choose the point of the frontier from which he prefers to depart the country.

In the report of the sessions of the Institute of International Law, held at Hamburg, 1891, reported in Volume XI, Professor von Bar introduced a project for an international regulation providing, among other things, that expulsion, not being a penalty, ought to be executed with all the consideration possible, taking into account the social situation and character of the person; and on pages 310 and 311 of the Annuaire, Volume XI, he says:

I do not doubt that the government whose citizen has been expelled may sometimes demand in favor of the latter an indemnity, but this will be only an application of a general and undisputed principle of the law of nations which prohibits a wholly unjust treatment of foreigners.

Calvo, in Volume VI of his International Law (Paris, 1896), sets out certain rules adopted by the Institute of International Law at its session September 9, 1892, at Geneva, touching the expulsion of foreigners. Rules 17 and 41, on pages 131 and 134, are as follows:

RULE 17. Expulsion, not being a penalty, ought to be executed with all the consideration possible, taking into account the particular situation of the person.

RULE 41. The expulsion of domiciled foreigners residing or having a commercial establishment ought not to be pronounced in a manner to betray the confidence which they have had in the laws of the state. It ought to allow them the freedom to use either directly, if it is possible, or through the intervention of third parties selected by them, all legal ways to arrange their affairs and their interests, as well active as passive, in the territory.

Rivier, in his Principles of the Law of Nations (Paris, 1896), Volume I, page 311, says:

The expulsion ought not to take place arbitrarily. In receiving an alien, in allowing him to establish himself, the Government has assumed in this respect a sort of tacit engagement. It is true, on the other hand, that in establishing himself in the country the alien subjects himself to the laws and institutions of this country, and thereby accepts the contingency of expulsion ordered in conformity with these laws and institutions. In several countries the right of expulsion is regulated and limited by law. A restriction which appears natural results from the authorization of domicile accorded to the alien. The expulsion ought not to take place in an offensive manner to the state to which the expelled individual belongs. The motives of expulsion are in general communicated to the state of the expelled party if it makes a demand of them. It may be that public interest does not comport with certain divulgences; in such case it seems that the affirmation that the measure is justified and does not concern the state, but only the individual, ought to be admitted as sufficient.

Wharton's Digest of International Law, Volume II, section 206, states the rules which have governed the practice of this Government in such cases, showing the full recognition and claim on its own part of the right of expulsion.

On November 5, 1895, in the Wiener Case (Foreign Relations, 1895, Part II, p. 801; Moore's International Law Digest, Vol. IV, pp. 82–85), Mr. Gresham, in an instruction to Mr. Smythe, took this high ground:

This Government can not acquiese in the arbitrary expulsion of its citizens from the territory of a friendly state on purely political grounds without satisfactory proof that their acts withdraw them from the guaranties of our treaty of 1864; and even were such proof presented and found sufficient they are entitled to a reasonable time to dispose of any business interests or possessions they may have there acquired.

On January 30, 1896, Mr. Olney, in an instruction to Mr. Young in the Hollander Case, reviewed the general doctrines applicable to the expulsion of aliens. (Foreign Relations, 1895, Part II, pp. 775–781; Moore's International Law Digest, Vol. IV, pp. 102–108.)

In the Wiener Case, January 24, 1895 (Foreign Relations, Part II, p. 809; Moore's International Law Digest, Vol. IV, pp. 87, 88), Mr. Gresham, in an instruction to Mr. Smythe, said that Haiti, "having assumed the responsibility of expelling a citizen of a friendly power without giving him any hearing, producing evidence against him, or allowing him opportunity for defense, was thereupon bound either to establish by proofs that there was good ground for the expulsion or else to indemnify the expelled person for the damage he has sustained."

The dispatch of Secretary Olney in the Hollander Case above referred to contains a masterly exposition of the doctrine of expulsion, applied to a concrete case, based upon a careful examination of international theory and practice. Unenforced by the authority of other state papers, it is sufficient to show that the policy of this Government is to admit the right but to safeguard its exercise.

In virtue of the provisions of this remarkable state paper, Mr. Jaurett is clearly entitled to indemnity. Notwithstanding the length

of the document, it is impossible to omit it in any serious discussion of the right and limitations placed upon the doctrine of expulsion. It is therefore set forth, with an unimportant omission:

In the year 1888 Mr. Hall was the minister of the United States at Guatemala. Mr. Hosmer was the United States consul-general there, and Hollander, an American citizen, was residing there publishing a newspaper by license of the Government of Guatemala. During that year Mr. Hollander made affidavit before Mr. Hosmer that Mr. Hall and certain high officials of Guatemala had been beneficiaries of a fraudulent overissue of bonds of that Government; that Mr. Hall's participation therein was shown by the books of certain bankers there, and that a certificate of a prominent citizen, Mr. Herrera, showed the complicity of the Guatemalan officials. Hollander filed the alleged certificate with Mr. Hosmer. Mr. Hall, hearing of these charges, asked Mr. Hosmer for Hollander's affidavits, the alleged certificate of Herrera, etc. These were refused, but copies were given him, and he (Mr. Hall) brought the matter to the attention of the Guatemalan Government, asking an investigation. The investigation was held and resulted in Hollander's arrest and imprisonment on February 8, 1889, on a charge of calumny and forgery. Before Hollander's trial came on and while he was in prison, he was, on May 14, 1889, expelled from the country by an Executive decree. The expulsion followed immediately on the decree, and he was not even allowed to see his family, or to make any business arrangements whatever.

Upon this state of facts this Government demanded a reasonable indemnity for Hollander, upon the ground that the harsh and hasty manner of his expulsion was in violation of international law. In its reply of December 22, 1893, the Guatemalan Government said:

"It is impossible to lay aside the right which the Government had to expel Mr. Hollander at the hour and in the conditions that, according to its judgment, were convenient. The Government was not under obligation to allow him more or less time to get out of the country, nor to accommodate him in any way. All the practices of international jurisprudence, supposing them to be certain and indisputable, fall down before a law clear that comes immediately from the sovereignty of a nation. The stranger who lands on our shore knows, or ought to know, that he is exposed to those eventualities, if he does not observe a convenient behavior, and he who puts in practice a right, as the Government of Guatemala has done, does not cause injury nor violate other people's rights. Whatever may be the consequences of Mr. Hollander's expulsion he must blame himself only, and lament them as the result of his want of prudence. This is an argument that, in my opinion, can never be answered satisfactorily. I shall say no more about it, because it seems unnecessary to explain a point in itself so clear. It is contradictory not to allow that the Government had the right to expel Mr. Hollander, and to want indemnity for a legal act."

"The practices of international law * * * fall down before a law clear that comes immediately from the sovereignty of a nation." The logical result of that proposition is that whatever a state by legal formula wills to do, it may do; and that international obligations are annulled, not infringed, by legalized administrative action in contravention of those obligations. The United States is unwilling to accept that proposition as seriously presented by Guatemala. I construe the language used to mean that as a rule of international law the right of expulsion is absolute and inherent in the sovereignty of a state; and that no other state can question the exercise of this right nor the manner of exercising it. It is possible some authority may be found in support of that view, and that it obtained in the earlier practice of nations; but the modern theory and the practice of Christian nations is believed to be founded on the principle that the expulsion of a foreigner is justifiable only when his presence is detrimental to the welfare of the state, and that when expulsion is resorted to as an extreme police measure it is to be accomplished with due regard to the convenience and the personal and property interests of the person expelled.

In 1888 Rolin-Jacquemyns, the secretary-general of the Institute of International Law, made a report to that body on the "Right of expulsion of foreigners," which is published in the Revue de Droit International (Vol. XX, p. 498, and following). The report was in answer to a call by the association for an examination of the question. "In what manner and within what limits

governments may exercise the right of expulsion of foreigners?" This jurist says:

"The first condition of the existence of a state is not only the existence of a group of citizens who recognize its sovereignty, but also the existence of a territory on which this sovereignty is exercised, as a matter of fact and of right, to the exclusion of any other sovereign authority. But this sovereignty would be compromised if it were possible for persons under no political obligation to the state which they enter, who contribute nothing in the way of personal service, and whose country, in short, is elsewhere, to install themselves there and defy the local authorities, by whom their presence is regarded as dangerous or injurious to the community."

Upon this principle of territorial sovereignty he formulates the fundamental rule that—

"Every state may limit the admission and the residence of foreigners upon its territory by such conditions as it deems necessary. But [he adds] there is another consideration which tends, not to annul, but to restrain this exercise of territorial sovereignty. The individual expelled has the double quality of being a man and a citizen of another state. As a human being he has the right to be exempt from needless harsh treatment and from unjust detriment to his interests; in his quality of citizen of another state, he has a right to invoke the protection of his country against duly rigorous treatment and against spoliation of his property. The act of expulsion ought to conform to its direct, essential object, which is to relieve the soil of an obnoxious guest. The right of national sovereignty does not require nor permit more. Generally an official order to leave the country within a specified time is sufficient. If not, force may be employed. But forcible eviction should never assume a gratuitously vexatious character."

This author makes a practical distinction, furthermore, between the treatment of a transient visitor and that due a resident foreigner who has established a business or acquired property interests which would be ruined by sudden expulsion.

"In the latter case it is especially important [he says] that the government which expels should exercise every indulgence, and accord all delay consistent with the public interests, if it would escape the charge of cruelty and masked persecution."

In closing his report, Mr. Rolin-Jacquemyns offers the following as one of five "conclusions:"

"Even in the absence of treaty, the state to which the expelled person belongs has a right to know the reason for the expulsion, and the communication of the reason can not be refused. Moreover, the expulsion should be accomplished with special regard for humanity and respect for acquired rights. Except in cases of special urgency, a reasonable time should be allowed to the expelled person to adjust his affairs to the new conditions. Lastly, except in cases of extradition, the expelled person ought to be allowed to depart by the route which he prefers."

Professor Bar (Journal Dr. Int. Privé, 1886, vol. 13, p. 5) quotes with approval Bluntschli's opinion that "the right to expel foreigners should not be considered as an unqualified right; if so, international relations would be impossible," and adds that, without denying the right of a state in certain contingencies to refuse foreigners access to its territory and to expel them from it, he confines himself to affirming "that the exercise of such a power should be limited to exceptional cases rigorously justified, and should not be at variance with the principles of international law and of the necessities of the case, nor in contravention of the practice of nations. * * * Any other course finds its condemnation in Vattel (Dr. Int., II, 8, 104), who says: 'The sovereign has no right to grant an entrance into his state for the purpose of drawing foreigners into a snare.'"

At a later meeting of the Institute of International Law (1891), in which a set of rules was formulated for the regulation of expulsion, Professor Bar said, in criticising one of the proposed rules which provided for diplomatic reclamation in favor of the expelled foreigner:

"I do not doubt that the government of the expelled person may sometimes demand an indemnity in his behalf; but this is only an application of the general and unquestioned principle of the law of nations which prohibits the unjust treatment of foreigners, a principle that needs not the sanction of an express regulation." (Inst. Dr. Int. Annuaire, Vol. XI, p. 310.)

Calvo (Dictionnaire de Droit International, title Expulsion) says:

"But when a government expels a foreigner without cause, and in a harsh, inconsiderate manner (avec des formes blessantes), the state of which the foreigner is a citizen has the right to base a claim upon this violation of international law and to demand adequate satisfaction."

To the same effect is Bluntschli (Droit Int. Codifié, art. 384).

Some investigation has been made of the laws and practice of other powers touching the expulsion of foreigners, and they have been found to comport generally with the principles advocated by the jurists above quoted. These writers—Bar, Bluntschli, Calvo, and Rolin-Jacquemyns—are specialists in the science of international law, and the opinions of no modern jurists are entitled to greater respect. Their utterances were made as statements of principle and without reference to any controversy in which their sympathies were engaged or by which their judgment might be biased.

In certain countries, of which Belgium is an example, the law relating to expulsion provides safeguards against abuse and injurious consequences, by requiring previous notice, by conceding the right of choice of the way out of the country, etc. In others, as in France, the law permits immediate expulsion, but the administration of it is tempered by Executive regulation. In an Executive order of December 17, 1885, the French Minister of the Interior deprecated and forbade harsh execution of the law by subordinate functionaries. "Whatever may be the necessities," he said, "which in the interest of public order are imposed on the superior authorities, I believe that the Government of the Republic should be actuated in matters of this nature only by considerations of impartial humanity consistent with the wholesome enforcement of the law." Referring to certain instances of harsh execution of the law by the police authorities near the frontiers, he says:

"This is, in my opinion, a misconception of the sentiment of humanity to which I alluded above, and an application of the letter of the law with a rigor which a free republican government like France can not afford to exercise toward foreigners of any nationality." (Journal de Dr. Int. Privé, vol. 13, 16, and 497.)

Expulsion is a police measure, having for its object the purging of the State of obnoxious foreigners. It is a preventive, not a penal process, and it can not be substituted for criminal prosecution and punishment by judicial procedure. (See Inst. Dr. Int. Ann. 286, 300.)

In no instance has an example been found of treatment such as that to which Hollander was subjected. Hollander had been admitted to residence in the Republic of Guatemala and encouraged to engage in business there. He lived for a long time in amity and intimacy with the high officers of the Republic, and those relations continued until he made the charge reflecting upon the integrity of certain of these officials. With the aid and support of the ruling powers he had built up a thriving newspaper and job-printing enterprise, which was in full operation at the time of his expulsion. The judicial powers of the Government of Guatemala at once took cognizance of Hollander's attack on the officials of the Government, and he was arrested upon the criminal charge of calumny and forgery. A trial and conviction upon that charge would have vindicated the Government and its officers and resulted in the punishment of Hollander if he was guilty of malicious libel and forgery. His acquittal would have been conclusive of his innocence. The circumstances of his expulsion give it the appearance of Executive intervention to take the matter out of the hands of the court, and, assuming the fact of his guilt, to administer punishment by way of instant and forcible expulsion. The fact that Hollander was expelled while awaiting trial, and in a manner that defeated the ends of justice judicially administered, is one of the most aggravating of the incidents which make the manner of his expulsion a flagrant violation of Guatemala's obligation to the United States respecting the treatment of our citizens. This high-handed treatment of Hollander carried also the appearance of discourtesy and unfriendliness toward the United States; and if not so intended, the action of the Executive implied disregard of an unmistakable character for the rights and sensibilities of a neighbor republic which feels as a wound every injury to its citizens.

* * * * * * *

Without contending that the Guatemalan law of expulsion is in derogation of Article XII of the treaty, and without taking exception to that law as a piece of domestic legislation, but having regard to the manner and circumstances only of Hollander's expulsion, it was effected in disregard of the rights

guaranteed to citizens of the United States by that treaty, and of "the prescription which," quoting from the Guatemalan letter of June 9, 1888, "can not be denied in any civilized country of the earth."

Returning to a consideration of the facts, Hollander was held in prison on bail more than three months, in the power of the Guatemalan authorities, awaiting trial. Then, suddenly and without notice, the judicial proceeding was abandoned and the accused was taken from prison, carried under guard to the coast, and put upon an outgoing vessel under an Executive decree of expulsion, leaving his family, his business, and his property unprovided for. He was literally hurled out of the country, leaving behind wife and children, business, property, everything dear to him and dependent upon him. Why that abandonment of the judicial investigation and resort to summary expulsion by administrative decree I do not inquire. But the United States takes this ground: The Government of Guatemala, whatever its laws may permit, had not the right in time of peace and domestic tranquillity to expel Hollander without notice or opportunity to make arrangements for his family and business, on account of an alleged offense committed more than three months before, Hollander having during the entire interval been in the power of the Government, subject to the proper enforcement of any of its laws, and at the time awaiting trial in the criminal court upon the identical charge upon which he was expelled. If expulsion was lawful and proper on the 14th of May, it was lawful and proper on the 8th of February preceding, when Hollander had already committed the offending act and had been held to answer for it in the courts of the country. After deliberating three months and more, with Hollander absolutely in its power, the Executive authority expelled him in a manner that defeated the course of justice in the courts of the country; that violated the rules of international law and the existing provisions of the treaty, and was contrary to the practice of civilized nations. In so doing Guatemala did Hollander, and through him the United States, a grevious injury, which can not be allowed to go without protest. He is entitled, upon the undisputed facts, to a reasonable indemnity, and you are directed to inform the Government of Guatemala that the United States expects it to be paid. (Mr. Olney, Secretary of State, to Mr. Young, minister to Guatemala, Jan. 30, 1896; Foreign Relations, 1895, II, 775.)

The instruction may be said to represent and crystallize the policy of this country in the matter of redress through diplomatic channels for unjustifiable or illegal expulsion of American citizens from foreign parts.

The practice of the United States in such matters is further set forth in the judgments of courts, of mixed commissions in which indemnities have been allowed in cases of illegal expulsion. For an enumeration of these various instances, see Moore's International Arbitrations, volume 4, pages 3333–3359. Further illustrations of the doctrine contended for are contained in Moore's International Law Digest, pages 97–101.

It may be asserted, perhaps, that the instances from American diplomatic correspondence, as well as the judgments of mixed tribunals, only set forth American practice, and that this American practice may be out of harmony with the practice of European nations. Fortunately, this contention, if made, is easily refuted, for in the Venezuelan arbitrations of 1903 at least four cases arose involving the exercise and limitation of the right of expulsion. The doctrine established by these various cases represents the carefully considered practice of Belgium, Italy, and Holland, and differs in no respect from the claims set forth by this Government in diplomatic correspondence and in the writings of enlightened publicists, whether they be continental, British, or North or South American.

The cases referred to, and upon which reliance is placed, are the following: The Belgian case of Paquet, Ralston's Reports, pp. 265–267; the Italian case of Boffolo, Ralston's Reports, pp. 696–706; the

Italian case of Oliva, Ralston Reports, pp. 771–782; and the Dutch case of Maal, Ralston's Reports, pp. 914–916.

While these four cases are correctly decided, and establish the doctrine of expulsion, with its necessary limitations, the case of Boffolo is specially singled out because the reasons underlying the doctrine and the limitations necessarily placed upon its exercise are there set forth accurately and at length. The opinion of the umpire, Ralston, is particularly valuable for the reason that the case of Boffolo was one which did not and could not appeal to the court, and any indemnity which might be allowed was reduced by the fact that Boffolo was allowed to return to Venezuela within a month of his expulsion.

The question before the court strangely resembles Mr. Jaurett's case. It appeared that one Boffolo, an Italian subject, reached Venezuela in June, 1898; that in the spring of 1900 he was a householder in Caracas and the publisher of an Italian weekly newspaper. It further appeared that he took upon himself the duty and liberty of criticising, albeit in an unimportant manner, the judiciary and the President of Venezuela. In other words, Boffolo was accused of displaying offensive political activity.

The accusation brought against Mr. Jaurett is similar, and a like similarity exists in the fact that both of these claimants were domiciled foreigners, and, as such, might not be expelled legally by Executive action.

From the opinion of the learned umpire the following quotations are made, although in so doing some of the language previously quoted will be repeated:

That a general power to expel foreigners, at least for cause, exists in governments can not be doubted.[a] (See Hollander Case in U. S. Foreign Relations for 1895, p. 775, and also see p. 801, same volume, citations to be found in sec. 206, vol. 2, Wharton's International Law Digest, and other citations hereinafter given.)

But it will be borne in mind that there may be a broad difference between the right to exercise a power and the rightful exercise of that power. Let us illustrate. In the Hollander Case (cited above) the Government of Guatemala contended:

"The Government was not under obligation to allow him more or less time to get out of the country, nor to accommodate him in any way. All the practices of jurisprudence, supposing them to be certain and indisputable, fall down before a law clear that comes immediately from the sovereignty of a nation."

To this Secretary Olney very forcibly replied:

"The logical result of that proposition is, that whatever a state by legal formula wills to do it may do; and that international obligations are annulled, not infringed, by legalized administrative action in contravention of those obligations. * * * I construe the language used to mean that as a rule of international law the right of expulsion is absolute and inherent in the sovereignty of a state, and that no other state can question the exercise of this right nor the manner of exercising it. * * * The modern theory and the practice of Christian nations is believed to be founded on the principle that the expulsion of a foreigner is justifiable only when his presence is detrimental to the welfare of the state, and that when expulsion is resorted to as an extreme police measure, it is to be accomplished with due regard to the convenience and the personal and property interests of the person expelled."

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[a] Noocienes de Derecho Internacional, by Miguel Cruchaga T. (of Santiago de Chile), says (sec. 177): "Puede el Estado expúlsar á los extranjeros por consideraciones de orden público; pero entendemos que este derecho no debe ejercitarse sino con mucha parsimonía y en casos muy especialísimos. El derecho en sí mismo, sin embargo, no puede negarse, puesto que el Estado también lo tiene, según el Derecho Público, con respecto á sus propios súbditos por via de grave pena."

We may cite Rolin-Jacquemyns, who reported on the subject to the Institute of International Law in 1888 (Revue de Droit International, Vol. XX, p. 498), and, after admitting the right of expulsion, said:

" * * * En sa qualité d'être humain il a le droit de ne pas être l'objet de rigueurs inutiles et de ne pas être injustement lésé dans ses intérêts. En sa qualité de citoyen d'un autre État il peut réclamer contre ces rigueurs ou ces spoliations la protection de son souverain. * * *

" * * * Il est dès lors légitime que l'État auquel appartient l'expulsé soit recevable á demander communication du motif special de l'expulsion, et cette communication ne peut lui être refusée.

" L'acte même de l'expulsion doit d'ailleurs être restreint à son objet direct, essentiel, qui est de débarrasser le sol national d'un hôte nuisible. Le droit de souveraineté nationale n'exige ni ne permet davantage. * * * Mais cette contrainte ne devra pas prendre caractère gratuitement vexatoirie."

He continues:

" 5° Même en l'absence de traités, l'État auquel appartient l'expulsé a le droit de demander à connaître les motifs de l'expulsion, et la communication de ces motifs ne peut lui être refusée."

In one of the latest works, discussing the subject " Protection des Nationaux Résidánt à l'Étranger " (p. 450), M. Tchernoff shows himself so little friendly to the right of expulsion that he remarks:

" Peu de personnes de nos jours soutiennent que le droit d'expulser les étrangers soit une attribution normale de l'État exerçant sa fonction civilizatrice."

Calvo (Dictionnaire du Droit International), title " Expulsion," says:

" But when a government expels a foreigner without cause and in a harsh, inconsiderate manner (avec des formes blessantes), the state of which the foreigner is a citizen has a right to base a claim upon this violation of international law and to demand adequate satisfaction."

See also Bluntschli, Droit International Codifié:

"ART. 383. Chaque État est autorisé à expulser pour motifs d'ordre public les étrangers qui résident temporairement sur son territoire. S'ils y ont établi un domicile fixe, ils ont le droit à la protection des lois au même titre que les nationaux.

" 1. Le droit d'expulser les étrangers n'est pas un droit absolu de l'État; l'admettre serait de nouveau porter atteinte au principe de la liberté des relations internationales. L'État n'est le maitre absolu ni du territoire ni des habitants du pays. L'ancienne théorie se fondant sur le principe du moyen âge que l'État est propriétaire du territoire, en avait abusivement déduit l'idée de la souveraineté illimitée de l'État. On reconnait cependant presque partout à l'État la faculté d'expulser les étrangers par simple mesure administrative et sans que les personnes atteintes par cette mesure puissent recourir aux tribunaux.

"ART. 384. Lorsqu'un gouvernement interdit sans motif l'entrée du territoire á un étranger dûment légitimé, ou l'expulse sans cause et avec des formes blessantes, l'État dont cet étranger est citoyen a le droit de réclamer contre cette violation du droit international, et de demander au besoin satisfaction.

" 1. L'État peut aussi être atteint dans la personne des ressortissants qu'il a mission de protéger. L'expulsion arbitraire peut amener des représentations diplomatiques: la partie lésée a toujours le droit de demander aide et protection à son consul ou de provoquer l'intervention de l'envoyé de son pays."

In the recent Ben Tillet affair, between England and Belgium, the arbitrator, M. Arthur Desjardins, of France, in his sentence examined thoroughly the reasons for the expulsion of Tillet (as we shall do hereafter in this case), and also as to the treatment accorded him in connection therewith, and maintained the right of Belgium to expel under the circumstances, and, as well, justified the manner in which Tillet was treated by Belgium. (Journal du Droit International Privé, vol. 26 (1899), p. 203.)

Hall says (International Law, p. 224):

" In such cases (expulsion of individual foreigners residing in a state) the propriety of the conduct of the expelling government must be judged with reference to the circumstances of the moment."

Says Professor von Bar (Journ. Droit Intern. Privé, Vol. XIII, p. 6):

" La conscience juridique universelle proteste contre l'usage arbitraire du droit d'expulsion. * * *

" Il nous paraît que l'État qui ouvre libéralement aux étrangers l'accès de son territoire ne droit pas pouvoir leur retirer à son gré le droit de séjour. (1) En ce sens Heffter, *Voelkerrecht*, sec. 62: 'Aucun État ne peut écarter de sou sol les

ressortissants d'un autre État, dont la nationalité est dûment constatée, ni les expulser après leur avoir fait accueil, sans avoir pour le faire de bonnes raisons, qu'il est tenu de communiquer au gouvernement dont ils relèvent.'

"Dans tous les cas il est d'une necessité indispensable d'apporter aux mesures de rigueurs qui peuvent être prises contre les étrangers un double tempérament. L'un est de pure forme: L'État qui recourt à l'expulsion doit invoquer des motifs de nature à la justifier. L'autre touche au fond: L'expulsion doit être conforme aux traditions et aux principes du droit des gens. * * *

"Une peine insignifiante prononcée contre l'étranger à raison d'une injure, d'une contravention de police, ne suffrait pas à justifier une mesure d'exclusion. Pour que l'infraction qu'il a commise puisse entraîner son expulsion, il faut qu'elle soit telle que, dans l'hypothèse où elle aurait été consommée sur le territoire, elle eût exposé le coupable à une perte assez longue de sa liberté, et à la privation au moins temporaire de certains droits. * * *

"Encore faudrait-il, de toute façon, pour que ce fait puisse donner lieu à une expulsion, qu'il soit prouvé, ou tout au moins rendu vraisemblable au plus haut degré, qu'il contient les éléments d'une violation grave et réelle de la loi, ou bien d'une tentative pour la commettre, ou encore d'un acte condamnable, appliqué a sa préparation. * * *

"Bluntschli pose en principe, dans son § 384, que l'expulsion arbitraire et non-motivée d'un étranger peut être le point de départ de réclamations diplomatiques de la part de l'État dont il est le national. Ce point est au-dessus de toute controverse. * * *"

Woolsey says (International Law, sec. 63, p. 85):

"6. No state in peace can exclude the properly documented subjects of another friendly state, or send them away after they have been once admitted, without definite reasons, which must be submitted to the foreign government concerned."

In the opinion of the umpire it may be fairly deduced from the foregoing that—

1. A state possesses the general right of expulsion; but
2. Expulsion should only be resorted to in extreme instances and must be accomplished in the manner least injurious to the person affected.

Must explanation of reasons and justification of conduct be made to an arbitral tribunal when the occasion arises? The question is answered in Moore's Digest.

Orazio de Attellis, a naturalized American citizen, entered Mexico in 1833, and on June 24, 1835, the President issued an order for his expulsion on the ground that he had "occupied himself again (he had been expelled before becoming an American citizen) in the publication of a periodical in which some productions appear which tend to ridicule the nation and to plunge it into anarchy." What the productions were and what was their offensive feature was not disclosed. The claimant was so expelled under circumstances of especial hardship. The American Commissioners contended that the expulsion was causeless, inspired by enmity, in violation of rights secured to inhabitants of the Republic by the Constitution and contrary to treaty relations.

The umpire (p. 3334) gave judgment in favor of the claimant.

In the case of Zerman *v.* Mexico, before the American and Mexican Commission of 1868, Sir Edward Thornton (p. 3348) said:

"The umpire is of opinion that, strictly speaking, the President of the Republic of Mexico had the right to expel a foreigner from its territory who might be considered dangerous, and that during war or disturbances it may be necessary to exercise this right even upon bare suspicion; but in the present instance there was no war, and reasons of safety could not be put forward as a ground for the expulsion of the claimant without charges preferred against him or trial; but if the Mexican Government had grounds for such expulsion it was at least *under the obligation of proving* charges before this Commission. Its mere assertion, however, or that of the United States consul, in a dispatch to his Government, that the claimant was employed by the imperialist authorities, does not appear to the umpire to be sufficient proof that he was so employed or sufficient ground for his expulsion."

The umpire awarded the claimant $1.000.

It appears therefore that the Commission may inquire into the reasons and circumstances of the expulsion.

Let us apply the principles above laid down to the case before us.

Boffolo was expelled, as the claimant Government contends (and nothing else is before the Commission), because he published a certain article supposed to reflect upon the local judiciary and referring in some purely incidental way to the President, and, as stated, recommended a socialistic paper. It is not the province of the umpire to pass upon Boffolo's taste or justice in so doing. He is, however, obliged to examine somewhat, first, as to whether in so doing he offended the laws of Venezuela, and, second, whether under the laws the expulsion was permissible.

* * * * * * *

Let us therefore see what law governed the matter of expulsion, for if none existed the power to expel was wanting. Another conclusion would make Venezuela's Government despotic—not republican or democratic.

The only provisions of law covering the right of expulsion either of natives or of foreigners were in articles 77 and 78 of the constitution of 1893, and read as follows:

"ART. 77. Además de las atribuciones anteriores, que son privativas del Presidente de los Estados Unidos de Venezuela, éste, con el voto consultivo del Consejo del Gobierno, ejercerá también las siguientes:

"9a. * * *

"3°. Arrestar ó expulsar á los individuos de la nación con la cual se está en guerra y que sean contrarios á la defensa del país.

"ART. 78. * * *

"4a. Prohibir la entrada en territorio nacional, ó expulsar de él, á los extrangeros que no tengan su domicilio en el país y que sean notoriamente perjudiciales al orden público."

According therefore to the constitution of Venezuela only as the nondomiciled foreigner might be shown to be prejudicial to public order would he be expelled. Let us pass over the fact that the Boffolo decree of expulsion declared that his presence was prejudicial to "national interests" and not to the "public order," as limited by the constitution, and see if such cause has been presented to this Commission as would justify the expulsion.

It is suggested that the expulsion may have taken place because of any one of three reasons:

1. That he spoke disrespectfully of the President.
2. That he criticised a subordinate member of the judiciary.
3. That he recommended the reading of El Obrero, a socialistic paper.

The effective answer to all of these propositions is that freedom of speech and of the press are guaranteed by the constitution of Venezuela, and an expulsion for either one would have been an infringement of the constitution of Venezuela, and this is not to be presumed the President would have done. The umpire is more disposed to believe that for public reasons satisfactory to itself the Government has chosen not to offer the basis of its action, rather preferring to submit to such judgment as to this Commission might seem to meet in the case.

The further suggestion is made that Boffolo, being a foreigner, did not possess the right to criticise the Government to the same extent as Venezuelans, while the Government possessed a larger power over him. To this may be replied that the constitution of Venezuela conferred upon foreigners the same rights as were assured to natives, and for the supposed offenses not the slightest punishment could have been inflicted upon the Venezuelans.

Summing up the foregoing, we may (in part repeating) say:

1. A state possesses the general right of expulsion; but
2. Expulsion should only be resorted to in extreme instances, and must be accomplished in the manner least injurious to the person affected.
3. The country exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an inefficient reason or none being advanced, accepts the consequences.
4. In the present case the only reasons suggested to the Commission would be contrary to the Venezuelan constitution, and as this is a country not of despotic power, but of fixed laws, restraining, among other things, the acts of its officials, these reasons (whatever good ones may in point of fact have existed) can not be accepted by the umpire as sufficient.

In view of the foregoing it only remains to consider the amount of damages to be awarded. The honorable representative of Italy has indicated that he would be content to accept 5,000 bolivars, and considering the harshness of expulsion as a remedy, the fact that only great provocation will, in the eyes of

international law, justify its exercise, and the further fact that expulsion of foreigners so readily leads the way to the gravest international difficulties, as it may be regarded as a national affront, the amount asked seems not intrinsically unreasonable. But bearing in mind the low character of the man in question (as developed before the Commission), and that his speedy return was permitted, the umpire believes his full duty will be discharged in allowing him 2,000 bolivars, and an award of this amount will be entered.

It is impossible to distinguish in principle Mr. Jaurett's case from the case of Boffolo. As previously stated, the claims were somewhat similar in origin; the reason for expulsion was identical; the same laws—namely, the laws protecting domiciled foreigners—applied to both and were violated in precisely the same manner. The decision of the umpire therefore applied as well to the one as to the other, and if in the case of Boffolo an indemnity was allowed an indemnity should be allowed in the case of Mr. Jaurett.

The claim of Boffolo did not, as stated, strongly appeal to the umpire's sense of moral justice, because the character of Boffolo was not beyond question. The Venezuelan Government has attempted to besmirch the character and standing of Mr. Jaurett, but each allegation has been met by a prompt denial and proof to the contrary has been furnished and is on file in the Department. The character of Mr. Jaurett therefore can not enter into the controversy and reduce, as in the case of Boffolo, the indemnity to which the law entitles an alien illegally expelled from the country.

The claim of Mr. Jaurett is for the sum of $25,000, and although there is no evidence in the Department to show the entire accuracy of the claim, Mr. Jaurett's statement, uncontradicted as it is, may well be taken as a basis. In his memorandum, dated the 2d of December, 1904, and on file in the Department, he says:

My financial and social position at the time of my expulsion was eminently satisfactory, as might be readily attested by the various legations, and by the bankers Boulton and Blohm, of Caracas. Being likewise the accredited agent of the Associated Press, the Reuters Telegraph Company of London, the Havos Agency of Paris, the New York Herald, and representative of the Anglo-Franco-Belgian committee of foreign bondholders, I receive from these various companies a fixed monthly compensation of $480, without taking in account the extras occasioned by the frequent political disturbances, such as the period of the blockade in 1902, which yielded me $6,300 in two months. The Associated Press alone paid me $2,500 and Reuters of London $2,100, as the books of these companies will readily show. If to these sums be added the revenue from my paper, the Venezuelan Herald, established by me in 1896, and the only American journal in Venezuela and West Indies, dedicated especially to finance and trade, and yielding an annual income of $6,000, and also the income derived from the "Information Bureau" founded by me in 1898, and to which all foreign legations directed their promoters, engineers, and others, in quest of information, it would be easy for me to establish, as anyone who has lived or is living there may testify, that my financial position was an enviable one. I had in the past six years amassed a certain capital, which I was able, thanks to my exceptional faculty for obtaining financial information, to place advantageously. This laboriously reared structure, representing eight and a half years of toil and effort, a South American dictator, for the pure gratification of his destructiveness, by a single stroke of his pen reduces to naught. In such a situation, at an age when the burdens of life begin to weigh heavily (I am nearly 50), it is no exaggeration to say that President Castro has indeed ruined me. * * *

The measure of damages, which must form a considerable item in any claim of indemnity, is always difficult to establish. Large and prospective profits in many cases have been wholly or partially rejected.

It does not appear whether the property of Mr. Jaurett was wholly destroyed by his expulsion, although it was impossible for him to carry on in Venezuela the legitimate business in which he was engaged and which, through his exertions, had become highly remunerative. It also does not appear whether he might have wound up his affairs by the employment of an agent. So that is it difficult to ascertain the exact amount of the losses actually sustained by this high-handed and sudden expulsion.

There is, however, an item in the measure of indemnity which should not be overlooked, namely, the indignity offered to Mr. Jaurett and the insult to the United States, whereof he is a naturalized citizen. As Mr. Olney well said, an injury has been done to Jaurett "and through him the United States a grievous injury which can not be allowed to go without protest."

If, therefore, all the facts be taken into consideration, it necessarily appears that the sum of $25,000, however composed, is not excessive, and in the absence of any proof to the contrary it may well be accepted as a basis for diplomatic settlement.

The diplomatic correspondence in this case shows that the Department espoused the claim of Mr. Jaurett from the beginning, and that the Department has insisted upon a settlement of the claim, but that Venezuela has refused to comply with the request of the Department.

In view of all the facts of the case, the determined attitude of the Department, and the justness of the claim, whether it be tested by the policy of this country, by the doctrines of writers of authority, by the decisions of mixed courts, or by the solemn judgments of international tribunals, it must appear that the time has come for language stronger than that employed in a request. A demand should be made upon the Venezuelan Government for the settlement of the claim in full, and if the demand be met with procrastination or refusal, the dignity of this Government would seem to require prompt and vigorous action, the exact nature of which it is for the Secretary to determine.

While it is eminently proper that the Jaurett claim be submitted with a demand for its settlement in accordance with the recommendation in the preceding paragraph, still it would be no less proper to have the claim investigated and adjudicated by an impartial tribunal. The advisability of arbitration was stated and urged in cipher telegram of the 28th of January, 1905, which requested "an impartial arbitration of the cases of the Bermudez Company, Critchfield, Jaurett, and the revision of the Olcott award, and the trial of all these cases absolutely on their merits." Should the Department insist upon compliance with the provisions of this telegram, the Jaurett claim might well be included and the undoubted rights of Jaurett and the liability of the Venezuelan Government be established in a judicial proceeding.

The question is submitted to the discretion of the Secretary.

IN THE MATTER OF
THE ORINOCO CORPORATION v. VENEZUELA.

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THE ORINOCO CORPORATION.

MAY 24, 1906.

The facts of the case of the Orinoco Corporation against Venezuela sufficiently appear in the attached memorandum, and even a casual perusal of the statement shows abundant reason for the good offices of the Department; indeed, diplomatic intervention may be a necessity if the property of the company is to be saved from destruction.

The claim, in brief, as will be seen from the memorandum, arises from the repeated concessions to various strangers of the territory which the Orinoco Corporation rightfully possesses, which concessions, both before and after the decisions acknowledging the rights of the Orinoco Corporation, involve almost the entire property of the Orinoco Corporation. The action of the Venezuelan Executive is, therefore, in derogation of repeated judgments of the Venezuelan court of last resort and of the international court of claims. For this tort, willfully committed by the Executive, there can only be diplomatic redress unless the Venezuelan Executive should abide by the decision of the courts and cease to molest the vested rights of the corporation. A failure to do so must result inevitably in a demand for arbitration before an impartial tribunal and the assessment of damages for repeated and tortious acts of which Venezuela is unfortunately guilty.

MEMORANDUM.

On September 22, 1883, the Government of Venezuela granted to Cyrenius C. Fitzgerald, his associates, assigns, and successors, for the term of ninety-nine years, a concession of a certain portion of the delta of the Orinoco, with the exclusive right to develop the resources of the territory granted, which was national property. The grantee was given the exclusive right of establishing a colony for the purpose of exploiting the mineral and agricultural resources and for the development of industries and manufactures. The Government agreed to establish two ports of entry within the territory granted. It was provided in the contract that Fitzgerald should commence the work of colonization within six months from the approval of the concession by the Federal Council; that he should establish a system of immigration, promote civilization, open necessary ways of communication, and arrange that the company of colonization should formulate its statutes and establish its management in conformity with the laws of Venezuela. There were favorable provisions in the contract regarding taxation. The Government agreed to organize the political, administrative, and judicial system of the colony and to provide an armed force necessary for the maintenance of public order. All residents of the colony were exempted from military service and from the payment of imposts or taxes, local or national, on the industries in which they might be engaged for a period of twenty years. An extension of six months was provided for to enable the concessionary to carry out his part of the agreement in the event that it should become necessary. This contract was approved by Congress May 27, 1884.

On June 14, 1884, Mr. Fitzgerald conveyed to the Manoa Company (Limited) the entire concession with all his rights thereunder. It had become necessary to obtain the six months' extension provided for in the contract, and this was granted on February 19, 1884, to date from the 22d of March following. In the following August an expedition was sent out by the Manoa Company, which commenced operations, as certified to on the 24th of September by the national fiscal supervisor and acting governor of the territory as being in performance of the contract, in accordance with its stipulations.

The agitation of the boundary dispute between Great Britain and Venezuela seriously interfered with the plans of the company in the development of the concession, and this fact was brought to the attention of the Venezuelan Government by the Manoa Company on March 4, 1885, through its president, C. C. Fitzgerald. Mr. Fitzgerald stated that he had been notified by the agents of the British Government that the latter would not permit the development of the resources of or the establishment of industries in such part of the concession as was claimed by it and would maintain a

force for the purpose of hindering trespass thereon. In view of this, Fitzgerald requested of the Venezuelan Government a clear statement of the guaranties to be expected in the future as to any interference with the company's rights, and that, whatever the result of the negotiations between England and Venezuela, the time lost thereby by the company should not be counted against the company.

On the 1st day of January, 1886, Gen. Gúzman Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe, on the one part, and on the other George Turnbull, American citizen, residing in New York, and then in London, entered into a contract at Nice which was identical with the Fitzgerald contract, but had an additional article, which provided:

This contract shall enter into vigor in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory.

By resolution of the Executive and federal council, of date September 9, 1886, the Fitzgerald contract was declared insubsistent and no longer in force, because the concessionary had not carried out the provisions of the contract within the time prescribed. On the following day the contract with Turnbull was ratified by the Executive and the federal council, and was approved by Congress on April 28, 1887.

It seems that Turnbull shortly after commenced operations under the contract, and on March 13, 1888, by resolution of the Executive and federal council, approved the same date, it was declared that the iron mine "Imataca," located within the 500 hectares of public land on the shore of the Caño Corosimo which Turnbull had purchased, should constitute a property apart from the concession which had been granted to said Turnbull, the minister of the interior being informed that this mine and land should not be submitted to the conditions and obligations set forth in the contract.

In June, 1888, Turnbull was given title to an asphalt mine which he discovered on the island of Pedernales. During the years 1888 to 1890 the local authorities of Delta, which was the name given to the territory embraced in the Fitzgerald concession, certified that the iron and asphalt mines were being worked by Turnbull and that other works were being carried on.

On May 28, 1895, the Manoa Company, successor to Fitzgerald's rights, petitioned the Government to acknowledge and reaffirm, by decree, its rights and ownership to the entire Fitzgerald concession, and the President of the Republic accordingly, on June 18 following, declared the annulment of the contarct for the concession granted to Turnbull, including the Imataca iron mine and the asphalt mine on the island of Pedernales, on the ground that Turnbull during eight years had not complied with any of the provisions stipulated, "excepting some steps taken for the exclusive benefit of his own convenience."

The Government on the same day issued a decree ratifying and reaffirming the old Fitzgerald grant in the Manoa Company and authorizing said company to renew its work of exploitation and development. Immediately after this decree the National Anony-

mous Company, which had purchased the asphalt mine from Turnbull, petitioned the Government to modify its decree of June 18 so that it would not include their mine. This petition was granted in the decree of July 10, 1895, the decree declaring that the Manoa Company did not own the Pedernales asphalt mine, but stating that the National Company—

> obtained the property through a good title, has been possessing in good faith, and has been and is now exploiting the said asphalt mine * * * so that respecting the said mine the failure of fulfillment on the part of the concessionary * * * is not applicable.

On November 20, 1896, another decree was issued, on the petition of Turnbull, declaring that the Imataca iron mine should not be included in the decree of June 18, 1895, but that the same belonged to Turnbull as his separate property.

The Manoa Company, on October 17, 1895, conveyed its entire grant to the Orinoco Company, excepting the Imataca iron mine and Pedernales asphalt mine, which had been conveyed to William M. Safford and Samuel Grant to hold as trustees for the Manoa Company.

The President of Venezuela, on November 20, 1896, "wishing to put an end to the difficulties which have presented themselves, preventing the exploitation of the delta of the Orinoco," recognized as valid the transfer made by the Manoa Company to the Orinoco Company of all its rights and titles to and in the said concession, with the exception of the iron mine and the asphalt mine. He acknowledged likewise as valid the work and other acts of the Orinoco Company done and performed by them in fulfillment of the terms of the resolution of June 18, 1895, decreeing that all facilities should be granted the interested parties and granting exemption from certain custom duties.

Under date of December 30, 1896, the Manoa Company, through its receiver and trustees, sold the Imataca iron mine and the Pedernales asphalt mine to the Orinoco Company.

It will be remembered that during this time the Government of Venezuela did not recognize any right in the Manoa Company, or its assigns, to the iron and asphalt mines.

It appears that on the 30th of March, 1895, Turnbull, then residing in London, entered into a contract with the Orinoco Iron Syndicate, an English corporation, giving them an option to buy the Imataca iron mine after they had examined and tested it. The English company accordingly shipped employees, machinery, material, and supplies to Venezuela, but on its arrival the ship was seized by the Venezuelan authorities for failure to land at the proper port. The vessel and cargo was confiscated, and the English company's rights of exploitation in the iron mine were ordered sold to defray the expenses and costs of the denouncement of the vessel. Accordingly, on November 18, 1898, the officials of the Government of Venezuela conducted a public sale at Ciudad Bolivar of the Imataca mine, and the Orinoco Company became the purchasers of the Government's claim under the supposition that the mine had become the property of the Orinoco Iron Syndicate and received a judgment granting all the rights of the Orinoco Iron Syndicate Company and the mine itself for 120,000 bolivars.

In 1899 Turnbull instituted judicial proceedings for the purpose of setting aside the sale of the Imataca iron mine, and the court decided in June, 1900, that "in the presence of the title shown by the plaintiff and that cited in opposition by the American company" (to wit, the title given at the sale of November 18, 1898), the title of the mine was vested in Turnbull, and that no other person had or possessed any right, title, or interest therein. Turnbull was put in possession of the mine and its appurtenances on August 4, 1900, by the Venezuelan authorities, and all persons were perpetually enjoined and restrained from impeding or interfering with the rights of Turnbull in said mine and property.

On October 10, 1900, the Supreme Chief of the Republic, by a resolution of that date, promulgated through the minister of the interior, declared the Fitzgerald contract of September 22, 1883, upon which the Orinoco Company based its rights, insubsistent and annulled, and that the decree of June 18, 1895 (reviving the contract after it had been annulled by the decree of September 9, 1886), was ineffectual without the intervention of a new contract, which had not been made. The reasons given for this second act of annulment were partly that—

> the company had not complied, in its fourteen years of existence, with any of the clauses established in article 5 of the said contract, and that this interferes with the interests of the Venezuelans for exploiting the natural products of that region of the Republic.

On May 14, 1901, the Government of Venezuela issued an abstract and certificate from the registry of the records, finding and certifying that the title to the property had been continuously—from the 13th of March, 1888, when the same was granted, until the 14th of May, 1901—vested solely in Turnbull.

Such was the state of affairs when the United States and Venezuelan Claims Commission was organized under the protocol of February 17, 1903.

The whole matter was brought before the Commission in the form of three claims for damages, submitted by the United States on behalf of George Turnbull, the Manoa Company, and the Orinoco Company. Of course the main point to decide in arriving at a conclusion in regard to these claims was the validity or invalidity of the Fitzgerald contract and the attempts of the Venezuelan Executive to annul the same.

The constitution and laws of Venezuela gave the President the power to—

> Administer the public lands, the mines, and the salt deposits of the States by delegation of an authority from the latter. (Title 5, sec. 1, art. 66, par. 2*a*.)

To—

> Celebrate contracts of national interest in accordance with the laws, and submit the same to the legislature for its approval. (Title 5, sec. 1, art. 66, par. 6*a*.)

The constitution also provided that the high federal court shall—

> Take jurisdiction of the controversies which result from the contracts or negotiations which the President of the Federation may celebrate. (Title 6, sec. 2, art. 80, par. 9*a*.)

After fully discussing the various phases of this complicated case, the American and Venezuelan commissioners differed in their opinions as to the responsibility of the Venezuelan Government to the claimants, and also as to the validity of the Fitzgerald contract.

The matter was accordingly referred to the umpire, and he rendered his decision on April 12, 1904. The umpire, after discussing the pertinent articles of the contract, the decree of the Venezuelan Government annulling the concession, and the failure of the company to perform the conditions of the contract, found substantially as follows:

(1) That the contract being bilateral, one of the parties to it had no authority to annul it, notwithstanding the failure of the other to perform its conditions, the failure of performance giving only a right to have it annulled by competent authority, and that that authority was, by virtue of Article II of the contract, vested in the competent tribunals of the Republic.

Article II referred to reads as follows:

> Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic.

(2) That by virtue of the above-quoted article "there could be no basis for a claim for damages but the decision of these expressly indicated judges about this question or controversy."

(3) The claims of the Orinoco Company, based upon the Fitzgerald contract, and of the Manoa Company, which were considered together, were rejected, the umpire using the following language:

> And whereas all the claims of the Manoa Company (Limited), as well as all the claims but one of the Orinoco Company (Limited), are claims for damages based on points that are questions and controversies arisen for reason of the Fitzgerald contract;
>
> And whereas not one decision of the competent tribunals of Venezuela about these questions and controversies that would make these damages due was laid before the Commission, while according to the contract itself between parties only such damages should be due which were asked on such grounds as would have been declared good grounds by these tribunals, the Commission can not declare due the damages claimed which the parties, by contract, declared not to be due.
>
> And therefore it can not allow these claims.

The Orinoco Company was given an award of 120,000 bolivars, or $23,076.93, with interest, covering the amount paid to the Venezuelan Government for rights purchased at the judicial sale on November 18, 1898, which rights the Republic could not dispose of, and out of the possession of which rights claimant was expelled by the proper authorities of the Republic.

Considering the foregoing decisions, it is hardly necessary to add that the claims of Turnbull were disallowed in toto.

Following the decision of the commission, the Orinoco Corporation, which had succeeded to the rights of the Orinoco Company, entered into several large contracts for supplying iron ore, entered into negotiations for the establishment of an agricultural colony, and made preparations for resuming operations upon the concession. The efforts of the company, however, have been hampered in various ways by the Venezuelans, and from the actions of the Venezuelan Government it would appear that they do not recognize the validity of the Fitzgerald contract, or, recognizing it, totally disregard the rights of the company thereunder.

The first hostile act toward the Orinoco people was in the form of a suit commenced on March 17, 1905, by one Juan Padron Uztariz (who was formerly the attorney and representative of George Turnbull) in the Venezuelan Federal Court against the Manoa Com-

pany, the Orinoco Company, and the Republic of Venezuela. In this suit Uztariz asked that it be declared and adjudged that the Fitzgerald contract was insubsistent and of no force and validity at the date when said Padron Uztariz, as he alleged, accused and obtained definitive titles under the mining law of Venezuela to the alleged mines of iron in the vicinity of Manoa and the concession. This date (when Uztariz claims to have obtained title) was between January and July, 1901, before the rendition of the decision of the commission.

The companies mentioned as defendants interposed objection that the Orinoco Corporation was the real party in interest and that therefore the suit ought not to be maintained, which objection was overruled, as was also their objection to the jurisdiction of the court. The Attorney-General of the Republic consented to the bringing of the suit against the Government because "believing that its true object was to obtain a declaration of dissolution of a contract which had never been complied with on the part of the concessionaries."

The case was tried before the Federal Court and of Cassation at Caracas. The attorneys for the companies defendant set up the defense of res judicata, while the plaintiff's argument for the annulment of the concession was based upon the first section of Article V of the contract of September 22, 1883, between the Venezuelan Government and Fitzgerald. This section reads as follows:

Cyrenius C. Fitzgerald, his associates, assigns, or successors, are bound:

(1) To commence the works of colonization within six months, counting from the date when this contract is approved by the Federal Council in conformity with the law.

The plaintiff's attack upon this article was contained in the following paragraph of his complaint:

The term conceded to the Manoa Company (Limited) to begin its works constitutes an expressed condition of dissolution, and if said company did not comply by beginning its works within this time, the contract is dissolved in law, and therefore the Government could justly so declare, as it did declare by its resolution of September 9, 1886.

In this connection it may be stated that this identical question was considered by the umpire of the United States and Venezuelan Commission in his decision, and he held that this article of the contract did not constitute a condition precedent. In discussing this article the umpire said:

Now, whereas Article V expressly says that the concessionary, his associates, assigns, and successors pledge themselves to begin within a certain time, and whereas they could not begin without a concession, because they would have had no right to work according to the concession on the Government grounds granted by the concession if they had not this concession; and whereas they could not have this concession, the contract by which it was granted not existing;

It seems evident that according to the will of contracting parties (the supreme law in this matter) this No. 1 of Article V, as all the other numbers of this article, was an obligation and not a condition;

Wherefore the mentioned Executive decree can not be regarded as a mere declaration that the contract was "insubsistente," but has to be regarded as an act by which the Government declared it "caduco"—that is to say, "annulled it"—which act could never have the effect of really annulling the contract, because in cases of bilateral contracts the nonfulfillment of the pledged obligations by one party does not annul the contract ipso facto, but forms a reason for annulment, which annulment must be asked of the tribunals, and the proper tribunal alone has the power to annul such a contract—this rule of the

law of almost all civilized nations being in absolute concordance with the law of equity, that nobody can be judge in his own case.

The Federal Court rendered its decision in this case on March 1, 1906, the court saying:

With respect to the complaint,

Whereas the authority of res judicata does not obtain except with respect to that which has been the object of the sentence;

That the opinion dictated by the umpire, H. Barge, with respect to the claim for damages, which, on account of the resolution of September 9, 1886, was introduced before the Mixed Commission by the Manoa Company (Limited) and the Orinoco Company (Limited), does not have the effect of res judicata in the present suit, because of the distinction between the matter complained of, the nature of the complaint, and the parties, which in one and the other litigation have intervened.

"Whereas by Article V of the contract celebrated on September 22, 1883, between the Minister of Fomento and Cyrenius C. Fitzgerald, he obliged himself to commence the works of colonization within six months, counted from the time when the contract was approved by the Federal Council, in conformity with the law of the matter;

Whereas such clause, which contains a simple term in the convention treated of, does not constitute, as is pretended by the plaintiff, an expressed dissolutory condition;

Whereas in none of the other articles of the said contract does there exist any stipulation which has the character of the forementioned condition, but rather Article XI says that the doubts and controversies arising by reason of this contract shall be decided in conformity with the laws of the Republic and the competent tribunals of the same;

Whereas by virtue of the said antecedents there does not proceed the dissolution in law of the contract;

Whereas the allegation that in distinct epochs, and for analogous reasons of inexecution, the insubsistence of contracts of national interest has been administratively declared, is of no efficacy, because, as is established by Article V of the Civil Code of 1881, reproduced in later codes, laws can not be repealed except by other laws, and it is of no use to allege disuse or custom or practice to the contrary, no matter how ancient and universal they may be, against their observance, under which principle the high federal court rendered its decision of January 4, 1889, and of June 6, 1898, in the respective suits arising by the Executive resolutions of August 3, 1887, and January 4, 1898;

Whereas from the preceding motives it appears that the complaint brought is without virtue or foundation;

For said reasons, administering justice by authority of the law, the said complaint is declared dismissed unfounded.

Prior to the rendition of this decision the Venezuelan Executive had, on the 2d of January, 1906, granted and conceded unto one Dr. Vicente Betancourt Aramburu, a Venezuelan citizen, for the term of ten years, the right to exploit and export the timber, of whatever nature, existing in the national forests in the region of the Orinoco Delta described in the contract, the said region being within the territorial limits of the Fitzgerald concession.

Another concession was likewise made on January 5, 1906, to Antonio José Salinas, granting, for the term of fifty years, the zone of lands comprised within the limts mentioned in said Salinas's concession, situate and being within the territorial limits of the said Fitzgerald concession; also the right of preference of exploitation of any mines discovered within said zone, and to accuse and obtain titles thereto, in accordance with the law. Copies of these two preceding contracts were filed with the Department by the attorneys for the Orinoco Corporation.

On the 20th of February, 1906, ten days before the decision in the Padron Uztariz Case was rendered, another concession was ma to Gen. Tobias Uribe of the island of Tortola, which is embra within the territorial limits of the Fitzgerald concession.

Again, on March 7, 1906, one week after the rendering of the decision in the above case by the Federal Court at Caracas, another concession was made within this territory to Dr. José Antonio Bueno. A copy of this contract was also filed in the Department. The attorneys have also filed copies of amendments to a second contract with Dr. Vicente Betancourt Aramburu, dated January 9, 1906, referring to another concession in this district, but a copy of the contract itself has not been furnished.

The Department has received voluminous correspondence and memorials from the Orinoco Corporation, asking that this Government intervene diplomatically to protect their rights under the Fitzgerald contract and suggesting that certain instructions be sent to our minister to Venezuela. No instructions, however, have been sent.

The representative of the Manoa Company and the Orinoco Company sent a letter to the Department (see letter of George M. Baxter, dated March 10, 1906), stating that the mentioned companies were willing to waive their claims for damages against Venezuela if that government will duly recognize the rights now vested in the Orinoco Corporation under the Fitzgerald contract and perform its obligations thereunder.

Mr. Baxter wrote another letter to the Department on the same date, stating that as a German company had become interested in the Pedernales asphalt mine, presumably through mesne conveyances from Turnbull, "the Orinoco Corporation is quite willing that the question of its rights to the possession of the mine be waived for the present and reserved for future consideration and action, if it is unable to adjust the same with the Orinoco Asphalt Company (the German firm), as it is confident it can do to its and their satisfaction."

The Orinoco Corporation people are very desirous to begin mining operations to enable them to fulfill existing contracts, but think that a request for a definition of its attitude and intentions by the Venezuelan Government is desirable, if not necessary, in the interest of all the parties concerned. In their letter of March 20, 1906, they inclosed a draft of instructions which they suggested be sent to our minister at Caracas. These instructions, after detailing briefly the circumstances of the case, were to the following effect:

It is apparent, under the circumstances above mentioned, that to all intents and purposes the deprivation of the memorialist of all of its rights in the premises is almost consumate; that it has been despitefully treated; that the denial of justice to it is complete; and that it would be useless to remit it to the courts of Venezuela for relief, as the Department is informed that those courts have neither the jurisdiction nor the power to compel the National Executive of Venezuela to comply with the obligations of contracts of this character.

The wrongs complained of are so oppressive and unjust, and so incontestably established, and the memorialist is so entirely without other means of securing the recognition of its rights at the hands of the Venezuelan authorities, that the Department feels constrained to intervene diplomatically in its behalf.

You are therefore instructed to bring this matter by immediate representation to the attention of the Executive authorities of Venezuela, and to respectfully but firmly insist that its Government is bound to observe and keep the obligations of said contract, and to respect the rights derived therefrom which justly belong to said The Orinoco Corporation, and especially:

First, to restore to the said The Orinoco Corporation possession of said iron deposits of "Imataca," and of which it was forcibly deprived by said Government on August 4, 1900.

Second, to formally rescind, as null and void, the Executive resolution of September 9, 1886, declaring the Fitzgerald concession contract of September 22, 1883, annulled (caduco), and all subsequent Executive resolutions, in so far as they declare the insubsistency or caducity thereof; and also rescind, as null and void, all Executive resolutions and decrees interfering with any of the rights and privileges granted in said contract or segregating any part or parcel of said concession.

Third, to formally and effectually declare and procure the cancellation of the several pretended mining or other concessions, of whatsoever nature, granted by the Government of Venzuela within said Fitzgerald concession since the date thereof.

Fourth, to formally and effectually declare and procure the cancellation of the recent contracts entered into by the Minister of Fomento under date of January 2, 1906, with one Vicente Betancourt Aramburu, and by the minister of interior relations, treasury, and fomento, under date of January 6, 1906, with one José Salinas, and on February 21, 1906, with one Tobias Uribe by the minister of fomento.

Fifth, if possession of the premises embraced in the contracts mentioned in the preceding paragraphs third and fourth, or any or either of them, has been taken thereunder and is now kept by the concessionaries thereof, that such possession be restored forthwith to the Orinoco corporation.

Sixth, to establish a custom-house or houses upon said Fitzgerald concession, in compliance with the stipulation of its said contract of September 22, 1883.

Seventh, to forthwith allow the Orinoco corporation and its assigns, and its and their boats, vessels, officers, agents, and colonists, free access to said concession, and to each and every part or parcel thereof, and the enjoyment of all the rights and privileges granted by said contract of September 22, 1883.

Eighth, to organize the political, administrative, and judicial system of the colony in accordance with the spirit of the contract, as contemplated by Article VIII thereof, and that it assure the maintenance of such organization during the lifetime of said contract.

Ninth, that in view of the time lost by the contractor, owing to the acts and through the fault of the Venezuelan Government, the advantages and immunities granted under Article IX thereof shall be extended for a period equal to the time so lost; in view of which the Orinoco corporation will waive all its claims for damages against said Government of every kind whatsoever.

As stated before, no instructions whatever have been sent to our minister.

As the policy of the Department is guided mainly by the principles of equity, it is deemed essential, before an equitable conclusion can be arrived at in this complicated case, that the following should be taken note of:

The umpire of the commission in the course of his decision, in discussing the question as to whether or not the company had fulfilled its obligations according to the terms of the contract, said:

Now, whereas this Article V reads as stated above, and whereas it is quite clear by evidence not only that the claimant on the said 9th of September, 1886, had not complied with one of his obligations; whereas even at the end of the prolongation of six months that was granted as a term to begin the works of colonization this colonization can not be said to have begun, as the sending of an engineer and some employees on the 24th of August can be said to be "commencing the works of colonization" (even if the then governor of the federal territory of the Delta, on the petition of the claimants' administrator stating the arrival of these employees, added the words "so complying with the stipulation or Article V," because this authority could only state the facts and was not the legal authority to judge whether by these facts claimant complied with the stipulation of the contract); whereas further on the original contractor himself, director of the claimant company, stated even as late as September, 1885, that claimant had not commenced the works of colonization;

That claimant had not established a system of colonization;

That claimant had not promoted the bringing within the law and civilization the savage tribes which might wander within the territory conceded;

That claimant had not opened up and established any ways of communication, and that claimant had not even arranged that the company of colonization should formulate its statutes.

And whereas the claimant company itself, as late as April 10, 1886, stated, in a petition to the Government of Venezuela, that it had not realized the works it was pledged to realize by the contract;

But that by the same evidence is shown that the claimant company, through its pecuniary position, could not have realized what by contract it was pledged to do, as, according to the company's president himself, the company from October, 1885, to November, 1885, never had in cash more than $6, and in that time did not spend a farthing for the execution of the contract, while during all that time the drafts drawn by the company's Venezuelan attorney, Mr. Heriberto Gordor, were protested as they could not be paid, with the exception of two for $400 each, which were paid by Mr. Safford, and not by the company's cash;

And whereas evidence shows that in January, 1885, stockholders resolved for the execution of the contract to issue $5,000,000 in bonds, which in November of that year were secured by mortgage on the concession, and for which even until November, 1886, not a penny was received by the company, that even the printing of the bonds could not be paid, and that Fitzgerald, who had sold the concession for 44,750 shares of $100 nominal each, in July, 1886, was willing to sell them for a few thousand dollars. The facts alleged as a reason for declaring the contract "insubsistente ó caduco" are proved, and it is clearly shown by evidence that on the 9th of September, 1886, the claimant company had in nowise fulfilled any of the duties imposed by the contract.

This part of the opinion of the umpire is excepted to by the Orinoco corporation in its brief to the Department of March 5, 1906, page 15. The following is their language:

The learned umpire of the mixed commission expressed the opinion that the Manoa Company had not on September 9, 1886, "fulfilled any of the duties imposed by the contract, and that there were sufficient reasons to declare the contract insubsistente ó caduco." (Ralston's Report, pp. 242, 243.) But this opinion was mere obiter dictum and unfounded upon all the facts of the case, some of which were not before him and some of which, in evidence, manifestly escaped his attention.

That this opinion of the learned umpire is mere obiter dictum and not res judicata becomes evident when we examine the ground upon which he rejected the claims for damages of the Manoa Company and of the Orinoco Company (Limited). The learned umpire disallowed these claims, not because the Manoa Company had not, as he supposes, "fulfilled any of the duties imposed by the contract * * * " and "that (therefore) there were sufficient reasons to declare the contract insubsistente ó caduco," but upon the only ground or motive common to the claims of both companies, that by Article XI of the contract it had been stipulated that all such claims must be submitted for decision to the competent tribunals of the Republic, which had been indicated as judges by the contract itself. (Ralston's Report, pp. 244, 245.)

As he there says, speaking of the claims of both companies growing out of the contract, "there could be no basis for a claim for damages, but the decision of these expressly indicated judges about this question or controversy;" and as he says again: "The parties have deliberately contracted themselves out of any interpretation of the contract, and out of any judgments about the ground for damages for (by) reason of the contract, except by the judges designed (designated) by the contract, and where there is no decision of these judges that the alleged reasons for a claim for damages really exist as such, (the) parties, according to the contract itself, have no right to these damages, and a claim for damages which parties have no right to claim can not be accepted."

He asserts that he had no jurisdiction over the matter of damages, because by the contract all questions or controversies arising out of it had to be decided in conformity with the laws of the Republic and by its tribunals.

It would seem to be absolutely clear that if, as the learned umpire contended, he had no jurisdiction over the matter of awarding damages, because the courts of Venezuela had such jurisdiction, he of necessity had no jurisdiction and no right to *decide* that the contract had not been complied with by the Manoa Company, for a declaration of such a character would be the exercise of jurisdiction where he concludes he had no jurisdiction. A declaration, therefore, of this

character made by the learned umpire is absolutely obiter dictum and not to be given the slightest value in any court. * * *

This is the present status of the whole case.

NOTE.—Since writing the above memorandum the attorney-general of Venezuela, on June 12, 1906, filed with the Federal and cassation court a complaint against the Manoa Company (Limited) and the Orinoco Company (Limited) for the annulment of the Fitzgerald contract of September 22, 1883. This complaint is based upon the obiter dictum contained in the decision of Umpire Barge to the effect that the concessionaries had not complied with their obligations under the contract, and that, therefore, there was reason for the annulment of the same on the application of the Venezuelan Government to the tribunals of that country. (No. 85, June 24, 1906, from Minister Russell, Caracas.)

Press dispatches of March 23, 1908, announce that the court has rendered its decision, annulling the Fitzgerald contract on the ground that the concessionaries had not complied with its terms.

IN THE MATTER OF
THE ORINOCO STEAMSHIP COMPANY v. VENEZUELA.

ANALYSIS AND SUMMARY.

I. Origin of the Claim.

May 24, 1906.

This claim arose upon a violation and annulment on the part of the Government of Venezuela of an alleged exclusive concession held by the Orinoco Shipping and Trading Company, a British corporation of which 90 per cent of the stock was held by American citizens. The Orinoco Shipping and Trading Company assigned all its assets, including concessions, claims for damages, etc., to the Orinoco Steamship Company, a New Jersey corporation with the same stockholders.

The Government of Venezuela entered into an agreement with the United States whereby all claims owned by American citizens, etc., were submitted to a mixed tribunal for arbitration and award. The umpire who presided over this tribunal, Doctor Barge, disallowed the major portion of the claim of the Orinoco Steamship Company, amounting to $1,401,559.03, allowing only $28,224.93. The Orinoco Steamship Company protests against this award and asks that the Government of the United States secure a rehearing of the whole matter before a competent and impartial tribunal. (See text, pp. 59–61.)

II. When May the Decisions of Tribunals of Arbitration be Impeached.

It is agreed by all the authorities on international law that in certain cases the awards of tribunals of arbitration may be impeached and rehearings may be properly obtained. Without going into a consideration of the causes which justify a rehearing, it is enough to say that it is substantially agreed by the writers of authority that excess of jurisdiction, refusal to take jurisdiction, or disregard of the terms of the jurisdiction conferred by the protocol of submission, or such a decision of questions of law or fact as to amount to a denial of justice constitute sufficient causes for declining to be bound by the arbitral decision. (See text, pp. 61–63.) For similar doctrine in municipal law, see pages 63–65.

The enlightened practice of nations, including especially that of the United States and Venezuela, is in full accord with this doctrine. (See text, pp. 65–71.)

III. The Decision Examined.

A. THE QUESTION OF JURISDICTION.

It was vehemently contended on the part of Venezuela that inasmuch as the claim of the Orinoco Steamship Company, although

now held by American citizens, did not originate as an American claim, but as the claim of an English company the tribunal of arbitration had no jurisdiction to consider it.

(1) The umpire, however, held that although this was the general rule, it may be modified by express treaty provisions, and that this had been done in the present instance where the terms of the protocol provided that the commission should consider "all claims *owned* by American citizens." The umpire, therefore, held that he had jurisdiction of the claimant's case.

(2) This decision might also be supported on the additional ground that the stockholders of the original company were American citizens, and the United States had a right to intervene in their behalf, although stockholders in a foreign company. (See pp. 71–73.)

B. THE DECISION ON THE MERITS.

(1) THE ALLEGED EXCLUSIVE FRANCHISE.

(*a*) *Held not to be exclusive.*—The claimant maintains that the concession of which it is the assignee gives it an exclusive franchise to navigate the Macareo and Pedernales channels of the Orinoco River, after touching at the foreign port of Trinidad. It admits that the before mentioned channels are open to all vessels bound to the coastal service and always have been, but it claims that by the Executive decree of July 1, 1893, vessels engaged in foreign commerce were excluded, and that therefore its franchise to navigate these channels notwithstanding the fact that its vessels were engaged in foreign commerce, was really an exclusive one. The umpire held that this alleged exclusive franchise had no existence; that the franchise of the claimant was in fact a general franchise to maintain a line of steamers between Trinidad and Ciudad Bolivar, etc.; and that the privilege of navigating the Macareo and Pedernales channels was a mere license, liable to be withdrawn by the Government at any moment upon fixing certain ports of transshipment and making certain installations. Whether or not the learned umpire was correct in thus holding it is not necessary to decide, inasmuch as he appears in any event to have overlooked the fact that as these installations had never, in fact, been made, the condition precedent upon which the Government had a right to terminate the exclusive privilege of the claimant had not been performed. Assuming the correctness of the umpire's view as to the question of exclusiveness, it is submitted that he was in error in not holding that the claimant was entitled to damages for the breach of its exclusive franchise from the date on which it was actually violated by the entrance of other vessels than those of the claimant into the named channels up to the date of the ruling of the commission, inasmuch as the government had not even at that date performed the condition precedent by fixing the ports of transshipment. These damages would amount, according to the claimant's figures, to about $125,000. It is admitted that this error would not in itself justify a demand for a rehearing. (See pp. 73–78.)

It is suggested that the claimant was entitled at least to nominal damages for the breach of its general franchise, but this point was not urged by the claimant or passed upon by the umpire (p. 78).

(*b*) As an additional reason for holding that damages could not be given for the breach of the alleged exclusive franchise, even in case he had found the franchise to be exclusive, the umpire held that the claimant was barred from recovery by the fact that a clause in its concession bound the company to seek redress in the courts and not by diplomatic intervention.

(*x*) It is suggested that the umpire is right in holding that this clause applies to the present situation (p. 79).

(*y*) But it is believed that no effect should be given to the clause under general principles of international law or the terms of the protocol. And it is submitted that the umpire's decision upon this point is in defiance of the terms of the submission, and, in so far as it is material, a just ground for a rehearing. It is to be remembered that this same vicious argument is used later on when there was no holding on the merits to render it obiter (pp. 79–81).

(*z*) Then, too, this holding is against the weight of authority, as exemplified by the rulings of other commissions, and flatly inconsistent with other holdings of Doctor Barge in other cases before the same commission (pp. 81–84).

(*c*) Moreover, the umpire held that even if the first two reasons did not exist, damages could not be given for the breach of the alleged exclusive franchise, because no notification had been given, as required by the terms of the contract, to the Venezuelan Government of the transfer of the concession to the claimant company.

(*w*) It appears from the terms of the contract that such notice was not necessary, except in the case of the first holder, one Grell (p. 84).

(*x*) This ruling seems to confound two entirely different things—the assignment of a contract and the assignment of damages for the breach of a contract (p. 84).

(*y*) It was not necessary, because the Commission was bound to decide according to justice and equity, without reference to technicalities, and the real parties in interest before as after the transfer were the same, the American stockholders (p. 85).

(*z*) It appears that notice had, as a matter of fact, been given, and no particular form of notice was required by the contract or was necessary in view of the terms of the protocol (pp. 84–85).

Summary of discussion regarding the right to the alleged exclusive franchise.

On this point—the vital point in the case—the umpire dismissed the company's claim for three reasons: First, on the merits, because he denied that the franchise was in fact exclusive. In this he made a material error, but not an error in itself sufficient to justify a demand for a rehearing. Second, because the claimant had contracted itself out of its diplomatic remedy. This reason is not only erroneous, but in direct disregard of the terms of the protocol. Third, because no notice had been given the Venezuelan Government of the transfer of the concession. This reason also is bad and in disregard of the terms of the submission. There being one good reason and two bad reasons, the decision on this point alone would not seem to justify a demand for a rehearing (pp. 85–86).

(2) THE 100,000 BOLIVARS.

By settlement of May 10, 1900, whereby the Orinoco Shipping Company gave up large claims against the Venezuelan Government and received a six-year extension of its franchise and 100,000 bolivars in cash, it was also agreed that the Government should pay the shipping company 100,000 bolivars at a date to be arranged later. This money has never been paid, and forms one item in the claim of the company. The umpire disallowed the claim on three grounds:

(*a*) That it did not appear that the money was due. In answer to this it is sufficient to say that it was due within a reasonable time after a date agreed on, and that fifteen months had elapsed at the time of the hearing before the Commission, and the money had not yet been paid, although the Venezuelan Government had repeatedly admitted its indebtedness (pp. 86, 87).

(*b*) Because of the clause in the contract binding the company to seek redress in the local courts, referred to above (p. 87).

(*c*) Because of the fact that the transfer of this debt to the claimant company had not been notified to the Government according to the provisions of Venezuelan law, which according to the umpire embodied the rule of absolute equity (p. 87).

Summary regarding the 100,000 bolivars.

The umpire here gives three reasons for disallowing this claim for 100,000 bolivars, all of them bad—the first an outrageous error of law and fact; the second and third, in absolute disregard of the plain provisions of the protocol, which provided that the rule of the decision should be the rule of absolute equity without regard to provisions of local law or technical objection (p. 88).

(3) VARIOUS ITEMS AMOUNTING TO $147,638.79.

(*a*) Of this sum $49,978.76 was disallowed by the umpire because of the reasons already given in regard to the 100,000 bolivars—reasons which, as we have seen, justify a demand for a rehearing (p. 88).

(*b*) An item of $61,336.20 for illegal discrimination in the enforcement of the internal blockade was denied upon its merits, and it does not appear that the ruling was so incorrect as to be ground in itself for a rehearing (p. 88).

(*c*) An item of $28,224.93 was allowed as due the claimant company for services rendered and goods furnished to the Government after the assignment of the shipping company and not affected by any of the provisions of the contract in regard to notice of transfer[a] (p. 88).

(*d*) Counsel fees asked by the company in the amount of $25,000 were disallowed by the umpire, this item sharing the fate of the principal sum in dispute. This ruling raises no question which would justify a demand for a rehearing (p. 89).

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[a] Twenty-seven thousand six hundred and ninety-two dollars and thirty-one cents was allowed out of $28,461.53 claimed for use of steamers by Venezuelan Government. Two small items amounting to $532.62 were allowed and several small items not specially noted elsewhere disallowed on their merits. These small items added to the sums above noted bring up the total amount claimed under this head to $147,978.76, as stated supra.

General Summary.

It therefore appears that while the amount claimed on the part of the company for damages for the breach of its alleged exclusive franchise was dismissed on its merits, nevertheless a serious error was committed by the umpire in this ruling. The umpire fortified his ruling on this point by giving two reasons absolutely in disregard of the terms of the protocol for submission, reasons which case had he not already decided the point upon its merits. It is, nevertheless, impossible to tell what effect these two arguments may have had upon the mind of the umpire in enabling him to reach his decision on this question, the main item in the company's claim.

Items amounting to $70,000, in round numbers, were thrown out on account of extraordinary errors of law and fact, and for reasons in palpable disregard of the terms of the protocol for submission—reasons unquestionably justifying a demand for a rehearing of the case, at least as to these points—that is, as to a material part of the case. Since the same vicious reasons given for the umpire's decision on this part of the case were also given for his decision on the main point in the case; since, moreover, his decision on the main point in the case is clearly, although not outrageously, erroneous; and since the umpire's whole decision not only abounds in error of law and fact, but also exhibits a tone which is, to say the least, nonjudicial in its character, it is submitted that the United States is amply justified in asking for a rehearing of the entire case before a competent and impartial tribunal.

The result reached in this opinion has already been approved by the Department and communicated to Venezuela. No cause having been shown to the contrary, the Department should, therefore, insist on a reexamination of the whole case on its merits before an impartial tribunal (pp. 89, 90).

MEMORANDUM.

The Orinoco Steamship Company.

ORIGIN OF THE CLAIM.

The Orinoco Shipping and Trading Company (Limited), hereafter referred to in this opinion as the shipping company, was duly organized and registered with the registrar of joint-stock companies, London, England, July 14, 1898, under the provisions of the English companies acts of 1862 and 1893.

It was empowered to acquire properties in Venezuela, including concessions, and to carry on the business of steamship transportation. The capital stock of the company was $100,000, all of which, except the seven statutory shares, was owned by American citizens.

On December 12, 1898, the shipping company acquired by purchase the entire assets of two Venezuelan corporations. Among these assets was a franchise of unquestioned validity, which will hereafter be referred to as the Grell concession. This franchise, which will later be discussed in detail, provided for the establishment of a regular steamship line between Ciudad Bolivar and the ports of Curaçao and Trinidad, British West Indies, and included permission to navigate the Macareo and Pedernales channels of the Orinoco River, notwithstanding the general law of Venezuela prohibiting vessels engaged in foreign trade with Ciudad Bolivar from proceeding otherwise than by the Boca Grande (Great Mouth) of that river. This concession was to have a duration of fifteen years. By Executive decrees of October 18, 1898, and September 4, 1899, the transfer of this concession to the shipping company was recognized and approved by the Government of Venezuela.

The Government of Venezuela being indebted to the shipping company as the assignee of the Orinoco Red Star Line, one of the Venezuelan corporations above referred to, in the alleged sum of $77,818.01, and in the further alleged amount of $476,732.50 for services rendered the Government, for which bills had been duly submitted and not questioned or disputed, entered into an agreement with the shipping company on May 10, 1900. According to the terms of this agreement the Government paid 100,000 bolivars ($19,219.19) down and agreed to pay 100,000 bolivars ($19,219.19) more, and granted an extension of the concession held by the shipping company for the further term of six years—that is, until 1915. In return the company acknowledged full satisfaction for the above claims held against the Venezuelan Government.[a]

[a] By another term of the agreement the company was released from its obligation to establish its line between La Guaira and Maracaibo and relinquished its claim to a subsidy of 4,000 bolivars, provided for by the original contract.

claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."

The claim of the steamship company was duly submitted to the arbitral tribunal so constituted. The claim consisted of four items: (1) For $1,209,701.05, which sum the claimant company reckoned as due for damages and losses caused by the Executive decree of October 5, 1900, said decree having, as the company affirmed, annulled its exclusive concessionary right; (2) for $147,638.79, at which the claimant company estimated its damages and losses sustained during the revolution, and the value of services rendered by the company to the Government of Venezuela; (3) for 100,000 bolivars, or $19,219.19, overdue on account of the settlement contract of May 10, 1900; (4) for $25,000 for counsel fees and expenses incurred in protecting and pursuing its rights.

The commissioners appointed by the United States and Venezuela having disagreed, the claim was referred to the umpire, Doctor Barge, who awarded $28,224.93 United States gold to the claimant company, this being the amount which he found due for services, etc., rendered the Venezuelan Government by the claimant company subsequent to the transfer to the claimant of all the rights of the shipping company. Doctor Barge rejected all the other contentions of the claimant, especially refusing, for reasons hereinafter discussed in detail, to allow damages for the annulment of the alleged exclusive concession held by the shipping company. It is a reexamination of this award before an impartial and competent tribunal that the claimant now asks.

W[illegible]N A DECREE OF A TRIBUNAL OF ARBITRATION BE HONORABLY DISREGARDED?

[illegible] conceding the essential value of international arbitration [illegible] upon the certainty and finality of the decision" [illegible] rel. Boynton *v.* Blaine, 139 U. S., 306, 325), it is [illegible]oted that both the theoretical writers of authority [illegible]tual practice unite in stating that the decrees of [illegible]s may be honorably disregarded in certain in- [illegible] causes which justify such disregard of the award [illegible]tration there is substantial unanimity.

[illegible]t the decision of a tribunal of arbitration may [illegible] the following cases: (1) Where the tribunal gives [illegible] of the jurisdiction conferred upon it. He explains [illegible] suggestion that the exact question to be submitted [illegible] the contentions on each side be carefully defined [illegible] high contracting parties. (2) In case the arbi- [illegible] guilty of corruption or open partisanship. (3) [illegible]on is so absolutely unjust as to be absurd and at the [illegible]h moment as to be of vital importance to the pro- [illegible] Vattel, book 2, ch. 18, sec. 329.)

[illegible] Heffter, the reasons which justify the disregard of [illegible] tribunal of arbitration are the following: (1) The [illegible]ention by which the question is submitted to the [illegible]onesty of the tribunal or umpire; (3) improper [illegible] denial, on the part of the tribunal, of the right [illegible]rties to be heard; (4) excess of jurisdiction on

By executive decree of October 5, 1900, the law of July 1, 1893, which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the Orinoco River, was repealed, thereby destroying the exclusive right to use these channels which the shipping company claimed was conferred by the concession, and which, as a matter of fact, they had enjoyed up to that time.

By a later executive decree, dated December 14, 1901, the Venezuelan Government absolutely annulled the extension of the concession granted by the contract of May 10, 1900. At the time of this decree the company, owing to misfortunes which had befallen its other vessels in the troubled times of the revolution, possessed only one steamer available for its La Guaira service. It appealed to the Government of Venezuela for a promise for protection for this vessel and received in return a note inclosing a copy of the executive decree, supra, annulling the extension of the concession. The company, which had hitherto endeavored to carry out its part of the contract irrespective of the decree of October 5, 1900, destroying the exclusive character of the concession which it claimed as of right, seems to have given up in despair and abandoned any further effort to continue navigation between La Guaira and the Orinoco (although it maintained its service between Ciudad Bolivar and Trinidad until interdicted by the Venezuelan Government May 31, 1902, on account of the disturbed state of the country), and to have turned first to England and then to the United States for diplomatic relief.

On January 31, 1902, the Orinoco Steamship Company, the present claimant, was incorporated under the laws of New Jersey. One of the objects for which it was incorporated was declared to be "to acquire and take over, as a going concern, the business now carried on by the Orinoco Shipping and Trading Company (Limited) of London, England."

On April 1, 1902, the Orinoco Shipping and Trading Company (Limited), for value received, duly assigned and transferred to the Orinoco Steamship Company, hereafter referred to as the steamship company or the claimant, all its assets of every sort and kind, including its Venezuelan franchises and properties, and all claims and demands in its favor against the Republic of Venezuela. Thereafter from time to time the claim of the Orinoco Steamship Company formed the subject of correspondence between the United States and the Government of Venezuela.

As a result of these negotiations on February 17, 1903, a protocol of agreement for arbitration was entered into between the United States and Venezuela covering "all claims *owned* by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments and which shall have been presented to the commission hereinafter named by the Department of State of the United States, or its legation at Caracas." The terms of the protocol provided that "before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide according to justice and the provisions of this convention all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or, in case of their disagreement, the umpire, shall decide all

claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."

The claim of the steamship company was duly submitted to the arbitral tribunal so constituted. The claim consisted of four items: (1) For $1,209,701.05, which sum the claimant company reckoned as due for damages and losses caused by the Executive decree of October 5, 1900, said decree having, as the company affirmed, annulled its exclusive concessionary right; (2) for $147,638.79, at which the claimant company estimated its damages and losses sustained during the revolution, and the value of services rendered by the company to the Government of Venezuela; (3) for 100,000 bolivars, or $19,219.19, overdue on account of the settlement contract of May 10, 1900; (4) for $25,000 for counsel fees and expenses incurred in protecting and pursuing its rights.

The commissioners appointed by the United States and Venezuela having disagreed, the claim was referred to the umpire, Doctor Barge, who awarded $28,224.93 United States gold to the claimant company, this being the amount which he found due for services, etc., rendered the Venezuelan Government by the claimant company subsequent to the transfer to the claimant of all the rights of the shipping company. Doctor Barge rejected all the other contentions of the claimant, especially refusing, for reasons hereinafter discussed in detail, to allow damages for the annulment of the alleged exclusive concession held by the shipping company. It is a reexamination of this award before an impartial and competent tribunal that the claimant now asks.

WHEN CAN A DECREE OF A TRIBUNAL OF ARBITRATION BE HONORABLY DISREGARDED?

"While conceding the essential value of international arbitration to be dependent upon the certainty and finality of the decision" (United States ex rel. Boynton *v.* Blaine, 139 U. S., 306, 325), it is nevertheless to be noted that both the theoretical writers of authority and diplomats in actual practice unite in stating that the decrees of arbitral commissions may be honorably disregarded in certain instances. As to the causes which justify such disregard of the award of a tribunal of arbitration there is substantial unanimity.

Vattel states that the decision of a tribunal of arbitration may be disregarded in the following cases: (1) Where the tribunal gives an award in excess of the jurisdiction conferred upon it. He explains his meaning by his suggestion that the exact question to be submitted to the tribunal and the contentions on each side be carefully defined in advance by the high contracting parties. (2) In case the arbitrators have been guilty of corruption or open partisanship. (3) Where the decision is so absolutely unjust as to be absurd and at the same time of such moment as to be of vital importance to the protesting nation. (Vattel, book 2, ch. 18, sec. 329.)

According to Heffter, the reasons which justify the disregard of an award of a tribunal of arbitration are the following: (1) The invalidity of the convention by which the question is submitted to the tribunal; (2) the dishonesty of the tribunal or umpire; (3) improper limitation or absolute denial, on the part of the tribunal, of the right of the contending parties to be heard; (4) excess of jurisdiction on

the part of the tribunal; (5) the absolute illegality of the rules adopted for the decision of the case, which he explains to mean the adoption of rules resulting in a decision which the parties could not have arrived at by means of a treaty. Finally, he says that mere error is no ground for refusing to accept the judgment of the tribunal. (Heffter, sec. 109.)

According to Bluntschli, the reasons are as follows: (1) Excess of jurisdiction; (2) dishonesty or denial of justice on the part of the tribunal; (3) refusal to hear the contending parties fairly, or a violation of any fundamental principle of procedure; (4) the fact that the decision is contrary to international law, which he also explains, or at least illustrates, by suggesting a case where the decision embraces terms which would be invalid even though agreed upon by way of treaty. He, also, states that mere error, or the fact that the decision is contrary to justice or the interests of the contracting parties, is no ground for refusing to accept the award. (Bluntschli, sec. 495.)

Calvo, in his monumental work on international law, covers the same ground with great elaboration. He states the causes as follows: (1) Lack of authority on the part of the arbitrators; (2) legal or moral incapacity on the part of the members of the tribunal; (3) bad faith or corruption on the part of the members of the tribunal; (4) refusal to give the contending parties a fair hearing; (5) disregard of the terms under which the question was submitted to the tribunal; (6) a decision so absolutely contrary to right and justice that its terms could not have been agreed upon by the contending parties by way of treaty. He, in turn, remarks that the decision can not be impeached because defective in form, or on account of mere error, or because it is contrary to justice or prejudicial to the interests of one of the contracting parties. (Calvo, vol. 3, sec. 1774.)

Hall, perhaps the most authoritative text writer of the English-speaking world, discusses the question as follows:

> An arbitral decision may be disregarded in the following cases, viz, when the tribunal has clearly exceeded the powers given to it by the instrument of submission, when it is guilty of an open denial of justice, when its award is proved to have been obtained by fraud or corruption, and when the terms of the award are equivocal. Some writers add that the decision may also be disregarded if it is absolutely contrary to the rules of justice, and M. Bluntschli considers that it is invalidated by being contrary to international law; he subsequently says that nothing can be imposed by an arbitral decision which the parties themselves can not stipulate in a treaty. It must be uncertain whether in making this statement he intends to exemplify his general doctrine or to utter it in another form. Whatever may be the exact scope of these latter reserves, it is evident that an arbitral decision must for practical purposes be regarded as unimpeachable except in the few cases first mentioned; and that there is therefore ample room for the commission, under the influence of sentiment, of personal or national prejudices, of erroneous theories of law, and views unconsciously biased by national interests, of grave injustice, for which the injured state has no remedy. It may be observed also that it must always be difficult for a state to refuse to be bound by an arbitral award, however unjust it may be. The public in foreign states will seldom give itself the trouble to form a careful judgment in the facts; it will prefer the simple course of assuming that arbitrators are probably right; a state by rejecting an award may stir up foreign public opinion against itself, and this it is not worth while to do unless very grave issues are involved. (Hall, ch. 11, 5th ed., p. 363; 4th ed., par. 119.)

It can, therefore, fairly be said that the leading writers of authority of all nations are substantially agreed upon the causes which jus-

tify a refusal to submit to the decision of a tribunal of arbitration. These causes may, perhaps, be summarized as follows: (1) Excess or disregard of jurisdiction. This covers situations where the tribunal either decides questions which have not been submitted to it, refuses to decide questions which have been submitted to it, or otherwise acts in flagrant disregard of the terms of submission or the rules which have been agreed upon as binding in the decision of the question. (2) Where the decision is equivocal. (3) Where the decision has been secured by fraud or corruption. (4) Where the decree or the proceedings of the tribunal evince such a patent disregard of substantive or adjective law, or the decision rests on findings in such reckless disregard of the true facts of the case as to render the decision absurd and outrageous; this heading being interpreted to cover all cases ordinarily described by the words "denial of justice," as well as possibly some cases which, while often so considered, are more accurately described, not as cases of denial of justice, but as cases where flagrant and palpable injustice has been inflicted—in fact, where a situation exists analogous to that which is termed in American constitutional law a failure of "due process of law." This last situation must not by any means be confounded with a case where the decision is attacked for mere error either of fact or law, or because the decision is unjust or inequitable or contrary to the interests of one of the contracting parties. The difference between the two situations is, of course, only a difference of degree, and, like all questions of degree, at times difficult of determination; but it is clear in theory. It is, as has been suggested, very much the same distinction as exists in American constitutional law between an incorrect decision and a decision which amounts to a denial of "due process," or the distinction between a verdict of a jury which the judge believes to be incorrect and a verdict which can be set aside as against the weight of the evidence, or a law which the judge believes to be unconstitutional and a law which is so clearly unconstitutional as to justify a judge in holding a statute enacted by a coordinate legislature unconstitutional. In fact, in many cases, as indicated above, it is the distinction between a denial of justice and an ordinary miscarriage of justice.

In considering the causes which justify the setting aside of an award, no references have been given to the judgments of municipal courts. The question has been considered solely in the light of international law. If we consider, however, the subject from the narrower standpoint of municipal law as understood and interpreted by courts of justice, it will appear that the views already set forth in extenso are confirmed in every material particular. The same reasons which justify the reopening of an international award suffice in a case of a submission between private parties. These reasons are briefly summed up by an English writer as follows:

> Where the award is invalid—uncertain—where the proceedings are irregular, where there is fraud on the part of the arbitrator, where the award has been obtained by misrepresentation of facts by one of the parties, where the award is altogether bad—in all these and similar cases it will be set aside. (Slater's Arbitration and Award, 2d ed., p. 120.)

The cases bearing on the various grounds set forth in this passage are legion. It may perhaps be worth while to cite a few illustrative cases from the Supreme Court of the United States.

In Carnochan & Mitchell *v.* Christie (11 Wheat., 446) the plaintiff and defendant having agreed to refer the matter in dispute to arbitration and the arbitrators having rendered their award, the plaintiff asked that the award be set aside on three grounds: "First, the arbitrators have not decided the whole matter that was submitted to them; second, they have decided and awarded what was not submitted; and, third, the award is uncertain." Chief Justice Marshall takes up each of these grounds in turn, assuming their correctness, but finding that in fact the arbitrators had not been guilty of either deciding matters not submitted or of refusing to pass on claims properly before them. The third contention, however, he holds to be not only well taken in theory, but sustained by the evidence, and sets the award aside "because it is uncertain and not final in a very material point." The reporter, Wheaton, whose notes rank almost with the text of the decisions themselves, sums up this portion of the case in the headnote as follows:

> An award must decide the whole matter submitted to the arbitrators; it must not extend to any matter not comprehended in the submission; and it must be certain, final, and conclusive of the whole matter referred.

In De Groot *v.* United States (5 Wall., 419) the court held, Justice Miller giving the opinion, that an award rendered by the Secretary of War must be set aside for the second reason suggested in the last case, namely, that the arbitrator had exceeded his powers in dealing with matters not referred to him by the terms of the resolution of Congress sanctioning the submission; while in Burchell *v.* Marsh (17 How., 344) the court, speaking through Mr. Justice Grier, laid down the limitation already noted in connection with international awards, when he said:

> If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error either in law or fact.

It would scarcely be profitable to attempt to follow the subtleties of municipal law on the point as to when an award is separable, and when excessive jurisdiction or palpable error as to part vitiates the entire award. It will be enough to refer in this connection to a well-known remark of Lord Denman in Tomlin *v.* The Mayor of Fordwich, where he said that he "always found a difficulty in separating the good part of an award from the bad. The arbitrator probably frames one part with a view to the other, and each may be varied by the view which he takes of the whole." (5 Ad., etc., & El., 147.)

In closing this reference to the law of municipal awards reference may be made to two cases from the State courts of the United States. In the first case referred to, Wyman *v.* Hammond (55 Me., 534), the arbitrator was empowered by the terms of the submission to determine a boundary line. Instead of confining himself to the decision of the matter intrusted to him, he assumed the right to run a new line according to his own ideas of justice and equity, disregarding the rules laid down by the parties and substituting for these rules his own unauthorized and irresponsible exegesis of "absolute equity," just as the umpire in our own case disregarded the terms of the protocol of 1903. The Maine court set the award aside.

The second case referred to was one decided by the great American chancellor, Kent, in which, although finding that the facts before

him did not justify the setting aside of the award, he lays down the general law of the subject, and especially in regard to the right to set aside the award on account of gross error of law or fact, in a way which leaves nothing to be said by way of comment. Herrick *v.* Blair (1 Johns. Chancery, 101) is as follows:

There was nothing done, in this case, by the arbitrators from which misconduct can be inferred. They only called a witness before them, who had been already examined in the presence of the parties, to explain his testimony, concerning which the arbitrators differed. It is not alleged, nor is it to be inferred, that the witness deposed differently, as to any fact, from what he meant to have testified, and to have been understood, on the first examination. The case does not come up to that of Walker *v.* Frobisher (6 Ves., 70), for there the arbitrator, after he had told the parties that the hearing was closed, and had dismissed them, examined three more persons on the part of the defendant, and when no person was present on the part of the plaintiff. This was unfair, partial, and a gross misconduct, and contrary to all the principles of a just proceeding. There is no analogy between that case and this; and to interfere and set aside the award upon an irregularity (even admitting it to be one) so slight and immaterial as the one now set up would be contrary to the general doctrine of the court in respect to awards. The uniform language of the cases is that an award can not be impeached but for corruption, partiality, or gross misbehavior in the arbitrators, or for some palpable mistake of the law or the fact. The arbitrators are judges of the parties' own choosing; their proceedings and award are treated with great liberality, and even a mistake upon a doubtful point often will not open an award. These principles have been declared and asserted in a series of decisions, all going to the same point and containing a great weight of authority not to be resisted. (Earle *v.* Stocker, 2 Vern., 251, and Pitt *v.* Dawkra, cited, ibid.; Cornforth *v.* Geer, 2 Vern., 705; Ives *v.* Medcalfe, 1 Atk., 63; Ridoul *v.* Pain, 3 Atk., 486; Tittenson *v.* Peal, 3 Atk., 529; Anon., 3 Atk., 644; Hawkins *v.* Colclough, 1 Burr., 274; Knox *v.* Symmonds, 1 Ves. jun., 369; Morgan *v.* Mather, 2 Ves. jun., 22; Chace *v.* Westmore, 13 East., 357.)

The injunction is, accordingly, denied.

Fortunately, we are not forced to rely on the abstract opinions of publicists or the analogous decisions of municipal courts, valuable as they are, upon the proposition that international awards may, under some circumstances, be reexamined, or for illustration of the circumstances under which such reexamination may be made. We can rely with confidence upon the authoritative practice of both the United States and Venezuela, the parties to the present controversy.

That the Republic of Venezuela admits and maintains the right to protest against and repudiate, for cause, sentences of arbitral tribunals appears from an inspection of the late report of the Venezuelan minister for foreign affairs to the National Congress of 1904, from which the following exact translation is made:

The fact that Venezuela subscribed to the agreements to which I have referred, and that by virtue of said agreements the mixed commissions entered upon an examination of the claims of foreign subjects, did not impose upon the Government the duty of indiscriminately accepting the sentences they might render. In such cases, the very faith that is to be placed in treaties, as well as the importance of arbitration in the solution of international litigations, makes it incumbent upon the governments availing themselves of it to become zealous guardians of the procedure of the persons to whom they confide such a high mission as that of settling their disagreements. The presumption that the arbiters must discharge their functions in a proper manner may at times be unfounded, and then the sentences ought not to deserve the respect nor do they have the authority which the protocol gives them. The character of a final decision can not always be conceded to arbitral decisions merely because they proceed from the persons appointed to constitute an arbitration commission, for if the treaty attributes such a character to them beforehand it is only in the

belief that such decisions would not be vitiated in any manner that could render them ineffectual.

The cause of arbitration would suffer severe injury if the principle should come to be accepted that all arbitral decisions must be carried out, whatever they may be. Publicists have already declared unanimously in favor of the right that governments have to seek the invalidation of certain sentences, and well known are the causes that, in their opinion, may lead to that recourse. In accordance with these views the agent for Venezuela before the Belgian-Venezuelan Mixed Commission opportunely entered a protest, which will be found in the corresponding sections of this report, against the sentence of the umpire of said commission in the claim brought by the Compagnie Générale des Eaux de Caracas. That protest, which was made a public document, was sent to the agents of Venezuela abroad and to the resident diplomatic ministers at Caracas. Through the Venezuelan minister in Belgium the Government is now engaged in presenting the matter through the proper channels in order to safeguard the interests affected by said decision. (Claimant's Protest, p. 3.)

A similar protest was made against the award of the umpire, Señor R. Gaitan de Ayala, of the Venezuelan and Mexican Mixed Commission, in the matter of the claim of Messrs. Martinez del Rio Hermanos. Said the agent for Venezuela, in his protest against this award:

That sentence which completely ignores the rights alleged by Venezuela and confirms purely and simply all the contentions of the claimants, is in every way contrary to the principles of equity, which ought to have been the guidance in such a matter in accordance with the agreement of arbitration entered into by the parties, as may be seen by the considerations which, in synthesis, the undersigned proceeds to present.

He then proceeds to object to the sentence for the following reasons: (1) That Venezuela and Mexico had agreed to submit all claims not decided through diplomatic channels to the commission; that the only claim known to Venezuela was the Martinez claim, the amount of which had been fixed by the attorney for the creditors at $116,707.50, with interest at 6 per cent; that, nevertheless, the commission gave judgment for a larger sum, thereby, in the opinion of the agent of Venezuela, exceeding its jurisdiction. (2) That while the umpire, for the purpose of fixing the amount of interest to be paid by Venezuela at 6 per cent, had relied on a certain agreement, he declines to find in favor of a contention of Venezuela which was sustained by the same agreement—this point apparently being an attack upon the logic or the fairness of the umpire. (3) That the umpire refused to acknowledge a certain other credit recognized in favor of Venezuela by the above agreement. The agent of Venezuela concludes as follows:

For the above considerations, and others set forth in the briefs of the undersigned, and in the opinion rendered by the Venezuelan Commission, all of which tend to prove the inanity of the sentence in question, the undersigned, in compliance with the instructions received from his Government, does hereby protest in the most formal and energetic manner against the said sentence of the 2d of October of the current year, in the matter of the claim of Messrs. Martinez del Rio Hermanos, and he reserves for Venezuela all the rights to which it may be entitled to impugn the said sentence at all times and before whomsoever it may be proper, until its nullification is obtained in accordance with equity and justice.

President Castro, in his message to the National Congress of Venezuela, indorses the protests of the agents of Venezuela in these cases, and refers to the matter as follows:

Of the awards made by the mixed commissions it was necessary and obligatory for us to protest against the one relating to the claim made by the general company of the Caracas waterworks. That award being in flagrant

contradiction to the provisions of the protocol and the principles of equity, the Republic could not admit it, as its recognition would have implied the abdication of its rights and the discredit of the arbitration; since if similar decisions were to be accepted, being in themselves null, the high ends which are sought by the institution of arbitration for the furtherance of harmony and justice would be turned to ridicule, as would also the trust and confidence which should be deserved by the judges. We had also to make a like protest against the sentence delivered by the respective umpires on appeal made from the Venezuelan-Mexican Commission. That sentence, which can only be qualified as absurd, occasioned surprise to everybody and gave rise to an unpleasant situation for a diplomat who had until then been appreciated amongst us. (Message, 1904, p. 29.)

Perhaps the most famous instance of a reexamination of the award of a tribunal of arbitration to be found in the whole history of international arbitration is that growing out of the convention between the United States and Mexico in 1868. That convention provided in the most exact and solemn terms for the absolute and final settlement of all claims " which may have been presented to either Government for its interposition with the other since the signature of the Treaty of Guadalupe-Hidalgo, * * * and which remain unsettled, as well as any other such claims which may be presented within " a specified time.

According to article 2:

The President of the United States and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decision without any objection, evasion, or delay whatsoever.

Again, it was agreed in article 5:

The high contracting parties agree to consider the result of the proceedings of this commission as a full, perfect, and final settlement of every claim, * * * and further engage that every such claim * * * shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

The commissioners appointed to represent the respective governments having disagreed, the umpire provided for in the commission proceeded to award $489,810.68 to the United States on account of the claim of one Benjamin Weil and $683,041.82 on account of the claim of La Abra Silver Mining Company.

Application was made to the umpire on the part of the Mexican Government for a rehearing of these claims and was denied, the Mexican Government saving all its rights in the premises by proper exception. Subsequently, the Mexican Government, without disputing its liability to pay the terms of the award, presented new evidence which it alleged showed that the awards had been sought and obtained upon fraudulent evidence. As a result, the Congress of the United States, impressed by the representations of the Mexican Government, provided, in the act distributing the moneys received under the award, for an investigation by the President of the charges of fraud presented by the Mexican Government in regard to the La Abra and Weil claims, and directed that if the President " shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried

it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico shall agree, or until Congress shall otherwise direct."

Differences of opinion as to whether the reexamination of the award should be made by an international or a domestic tribunal, and delays which are the natural and unavoidable accompaniment of the decision of such questions under a free government, postponed further action on the part of the United States for some years, during which several installments of the award, which were promptly paid by Mexico, were turned over to the claimants.

The attitude of the United States in such matters was, however, correctly expounded in a report made June 11, 1886, by the Senate Committee on Foreign Relations, as follows:

> Indeed, the United States, both in its dealings with other governments and its own citizens, has never regarded the awards of commissions or final adjudications as irrevocable where the honor of the United States was involved, and in many cases they have been set aside on behalf of claimants. The case of Venezuela is fresh in legislative annals and requires no more than a citation. The awards under the Mexican treaty of 1848 were twice set aside—once by the courts in the Gardner claim and once by direct act of Congress in the Atocha claim. (13 Stat., 595; 16 Stat., 633.) In the interest of the rejected claimants, Congress reopened two of the awards of the commissions under the Chinese claims treaty of 1858. (15 Stat., 440; 20 Stat., 171.) In the case of the *Caroline*, the Secretary of State returned to Brazil money which had been paid after a diplomatic settlement, against the protest of the claimant, and Congress appropriated a large sum to reimburse Brazil for moneys paid the United States representative but which never reached the Treasury. (18 Stat., 70; Moore's International Arbitrations, vol 2, pp. 1341, 1342.)

Finally, in 1892, Congress passed an act conferring jurisdiction on the Court of Claims to investigate both the Weil and La Abra cases and to determine whether the charges of fraud were well founded. As a result, the Court of Claims held, in United States *v.* La Abra Silver Mining Company (29 Court of Claims, 432; 32 Court of Claims, 462) and in United States *v.* Weil (29 Court of Claims, 523; 35 Court of Claims, 42), that the awards in both cases were obtained by fraud and perjury. The claimant in the La Abra Case appealed and the judgment of the Court of Claims was affirmed on appeal. (La Abra Silver Mining Company *v.* United States, 1899, 175 U. S., 423.)

As a result of these holdings, the Secretary of State returned to the Mexican Government all payments on account of the La Abra and Weil claims which were in the hands of the Department (Foreign Relations, 1900, pp. 781, 782) and Congress appropriated the money for the repayment to Mexico of the installments which had already been turned over to the claimants. (32 Stat. L., p. 5; see as to La Abra Case, Moore's International Arbitrations, vol. 2, pp. 1324–1348.)

But the instance of reopening an award of a tribunal of arbitration which approaches most nearly to the one under consideration in this case is that of the Pelletier claim against Haiti. (Moore's International Arbitrations, vol. 2, pp. 1749–1805.) In the case of this claim, on the protest of the Government of Haiti, the United States, after an investigation of the circumstances, set aside and

declined to enforce the award made by the arbitrator, the Hon. William S. Strong, formerly justice of the Supreme Court of the United States, in favor of the American claimant, on the ground that the arbitrator had misconceived and therefore disregarded the scope of the terms of the submission.

Pelletier was the master of the bark *William*, which entered the port of Fort Liberté, Haiti, in 1861. The bark was seized and confiscated as a slaver, and Pelletier was tried and convicted on the charge of piracy and attempted slave trading. He was condemned to five years' imprisonment, but escaped in 1864. From that time until 1878 he repeatedly memorialized Congress and the Department of State, and repeated reports were made advising against taking up his claim. Finally, in 1878, on the strength of a favorable report by the examiner of claims of the Department of State, the matter was taken up on behalf of the United States, and Haiti consented to refer this claim, along with that of one A. H. Lazare, to the arbitration of Justice Strong. The arbitrator found that Pelletier was unquestionably engaged in an illegal enterprise and that "had the bark been captured and brought into an American port when she was seized at Fort Liberté, she would have been condemned by the United States courts as an intended slaver." He further held that, in general, Pelletier had received a fair trial from the courts of Haiti, but he awarded $57,250 damages to the claimant on the ground that according to the terms of the protocol he was bound to decide the case "according to the rules of international law existing at the time of the transactions complained of," and that under the terms of this protocol it did not matter that Pelletier had been guilty, within the jurisdiction of Haiti, of an attempt to carry on the slave trade, which was punishable by the local laws of Haiti, since slave trading did not amount to piracy according to international law.

Said Chief Justice Strong:

> Nor was there anything done by him, Pelletier, in the ports of Haiti that amounted to piracy, recognized as such by the law of nations. As I have said, I do not care to inquire what the law of Haiti defining piracy may have been. *It is another law which is to be the rule of decision in this case. So it is submitted in the protocol.*

As has been said, the Government of Haiti protested this award, and Secretary Bayard reported that the arbitrator had misconceived the scope of the jurisdiction conferred upon him by the protocol. It is true the arbitrator was to decide the case according to international law, and by international law the slave trade was not piracy. But, as Mr. Bayard said:

> It was a rule of international law in 1861, and it is a rule of that law now, that offenses committed in the territorial jurisdiction of a nation may be tried and punished there according to the definitions and penalties of its municipal law, which becomes, for the particular purpose, the international law of the case. It matters not what the offense may be termed, if it appears that a violation of the municipal law was committed and punished. (Mr. Bayard's report, quoted in Moore's International Arbitrations, vol. 2, p. 1799.)

Therefore, the arbitrator had, as a matter of fact, in refusing to consider the municipal law of Haiti, declined to consider the law of

the case according to international law, and had disregarded the terms of the submission.[a]

In the Orinoco Steamship Company Case it is maintained that the umpire reversed this process and by considering local law where the terms of the protocol expressly provided the contrary disregarded the terms of the submission and justified the United States in asking for a rehearing in so far as this holding of the umpire was material.

But not only are Venezuela and the United States both on record in accord with the publicists of recognized authority in holding that the decrees of tribunals of arbitration may, in proper cases, be put to the test of a reexamination, but in a single instance, referred to above in the quotation from the report by the Senate Committee on Foreign Relations, in the La Abra Case, Venezuela has sought and obtained this relief at the hands of the United States where the decrees of the tribunal have been favorable to the United States. Reference is, of course, made to the reexamination of the findings of the United States and Venezuela Commission of 1866. In that year, after protracted negotiations, the United States and Venezuela agreed to submit a number of claims of American citizens against Venezuela to an arbitral commission whose decision was to be binding on both parties and absolutely final. The commission decided 49 claims, making awards in favor of the United States amounting to $1,253,310.30. In due season the Venezuelan Government protested against the awards of the commission, alleging irregularity in the appointment of the umpire and fraud in the proceedings and findings. An investigation was accordingly had by the Committee on Foreign Affairs of the House of Representatives, which found that the alleged commission "was a conspiracy" and that "its proceedings were tainted with fraud." The usual delays and difficulties resulted, but in 1888 a convention was signed between the United States and Venezuela, providing in the broadest terms for a rehearing of the claims which had been determined by the former commission. This convention was held by the commission to call, not for a mere review, but a complete reexamination of every claim. It resulted in a new set of awards, resulting in the aggregate of a saving, including interest, of nearly a million and a half dollars to Venezuela as compared with the findings of the first commission. (See Moore's International Arbitrations, vol. 2, p. 1690.)

Under these circumstances, supported by the unanimous authority of writers upon international law, fortified by authoritative precedents on the part of both the parties to the present controversy, and especially in view of the fact that the United States has accorded in the fullest degree to Venezuela the reexamination of an arbitral award, which it now asks on its own behalf, it is submitted that the United States may, with perfect reliance upon the justice of its cause and every right to expect that it will receive from Venezuela the same measure of justice and equity that Venezuela has in the past received from the United States, ask for a rehearing, before an impartial tribunal, of the award of the commission in regard to the claim of the Orinoco Steamship Company, in case it should be found that, tested by the foregoing principles, a situation exists which justifies the United States in asking for a review of the award.

[a] The Lazare award was also set aside on the ground of newly discovered evidence.

THE DECISION EXAMINED.

THE QUESTION OF JURISDICTION.

In order to determine whether or not a reexamination of the award of the tribunal of arbitration in this case may properly be granted, it will be necessary to examine the finding of the learned umpire in detail in order to consider whether or not that finding, when so examined, shows that the decision need not be accepted as final, but is properly open to reconsideration and review according to the above practice.

In the first place it will be necessary to determine whether the learned umpire actually took jurisdiction of the matters in controversy. The protocol of agreement, under which the case was submitted to arbitration, provided, as already stated, for the submission of "all claims owned by citizens of the United States of America against the Republic of Venezuela which shall not have been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission."

It is not denied that, as a general principle, claims in order to form a just subject for international reclamation must not only belong to citizens of the complaining nation at the time of the presentation of the claim, but that they must have originated as claims of the citizens of such nation.

Even were there nothing else to take this case out of the scope of the general rule, it is believed that it may with reason be contended that the present claim could, from one aspect, be regarded as a claim not only American in present ownership but in origin. As we have seen, it originated as the claim of the Orinoco Shipping and Trading Company, a British corporation. All but seven shares of the stock of the company, however (more than 90 per cent), was owned by American citizens, and it is submitted that in matters like this the law looks through the artificial legal entity to the natural persons who compose it. The principles of our municipal law seem to regard the conception of corporate existence, apart from the existence of the stockholders who compose the corporation, as a legal fiction which, while useful in many cases, ought not to be invoked to defeat the principles of justice and equity.

This principle is stated by Morawetz as follows:

> But there is this difference. In equity the conception of a corporate entity is used merely as a formula for working out the rights and equities of the real parties in interest, while at law this figurative conception takes the shape of a dogma, and is often applied rigorously, without regard to its true purpose and meaning. In equity the relationship between the shareholders is recognized whenever this becomes necessary to the attainment of justice; at law this relationship is not recognized at all. (Morawetz, Corporations, sec. 227.)

International law, far more than municipal law, should deal in realities and not in fictions. In the famous Delagoa Bay Case England and the United States intervened in order to protect the interests of English and American stockholders in a Portuguese corporation. An agreement for arbitration having been reached by England and the United States on the one hand and Portugal on the other, the arbitrators, after a careful consideration of the case, rendered an award in favor of the British and American claimants for a large sum. Another instance of intervention on the part of a government

to protect its citizens as stockholders in a foreign corporation is found in the recent case of the El Triunfo Company (Limited), a corporation created by Salvador. A concession had been granted to this corporation by the Government of Salvador, which was arbitrarily withdrawn. Fifty-one per cent of the stock of the El Triunfo Company was owned by the Salvador Commercial Company, an American corporation, and other citizens of the United States. The United States Government intervened in behalf of its citizens. The Republic of Salvador objected that the United States could not intervene between a Government and its own creature, a corporation created by it. The entire matter was finally referred to arbitration.

Again, before the arbitrators, Salvador maintained that the United States could not interfere on behalf of the stockholders; but the umpire, Sir Henry Strong, and the American commissioner held that the United States had a right to protect them as American citizens, who were the real parties in interest, and made an award for $750,000 damages.

The ordinary rule that international claims must originate as claims of citizens of the nation which presents them was laid down in the case of Abbiatti *v.* Venezuela before the United States and Venezuelan Claims Commission of 1890. It was held in that case that under the treaty claimants must have been citizens of the United States at the time when the claim arose, but the tribunal took occasion to point out that this admittedly settled doctrine might properly be modified by the terms of the arbitration agreement.

Said Mr. Commissioner Little, in the course of his opinion:

> As observed elsewhere, the infliction of a wrong upon a state's own citizen is an injury to it, and in securing redress it acts in discharge of its own obligations and, in a sense, in its own interest. This is the key—subject, of course, to treaty terms—for the determination of such jurisdictional questions: Was the plaintiff state injured? It was not when the person wronged was at the time a citizen of another state. Naturalization transfers allegiance, but not existing state obligations.

As indicated in this passage, it is of course perfectly competent for nations to agree to submit claims to arbitration which were not originally claims of citizens of the complaining nation. It was with a view to accomplish this purpose and with special reference to the facts of this particular case that the protocol of agreement for submission provided that the commission should have jurisdiction of "all claims *owned* by citizens of the United States of America," instead of following the ordinary phraseology of such agreements. Despite the fact that this construction of the terms of the agreement is apparently obvious and unescapable, the representative of Venezuela argued that the commission should refuse to assume jurisdiction of the claim of the Orinoco Steamship Company on the ground that it was not American in its origin, inasmuch as it was the claim of an English company which had been assigned to an American company. (Record, p. 191 et seq.; Ralston's Report, p. 76 et seq.; Morris's Report, p. 258 et seq.

The umpire, however, after consideration, ruled that the commission had jurisdiction, saying:

> As the protocol does not speak, as is generally done in such cases, of all claims of citizens, etc. (which would rightly be interpreted "*all claims for injuries done to citizens*"), but uses the unusual expression "all claims owned by citizens," it must be held that this uncommon expression was not used without a determined reason. (Record, pp. 208, 209.)

The umpire then took notice of the fact, as shown by the diplomatic correspondence between the United States and Venezuela, that the claims of the Orinoco Steamship Company had been the subject of lively discussion and were undoubtedly in the minds of the negotiators who concluded the convention. The umpire concludes his discussion of the question of jurisdiction as follows:

And therefore it may safely be understood that it was the aim of the high contracting parties that claims such as these, being at the moment of the signing of the protocol *owned* by citizens of the United States of North America, should fall under the jurisdiction of the commission instituted to investigate and decide upon the claims the high contracting parties wished to see settled.

And therefore the jurisdiction of this commission to investigate and decide claims *owned* by citizens of the United States of North America at the moment of the signing of the protocol has to be recognized, without prejudice naturally of the judicial power of the commission and its duty to decide upon a basis of absolute equity when judging about the rights the transfer of the ownership might give to claimant against third parties.

For all which reasons the claims presented to this commission on behalf of the American company, "The Orinoco Steamship Company," have to be investigated by this commission and a decision has to be given as to the right of the claimant company to claim what it does claim, and as to the duty of the Venezuelan Government to grant to the claimant company what this company claims for. (Record, p. 210; Raison, p. 85; Morris, p. 268.)

After this unequivocal statement on the part of the umpire it could not possibly be denied that he did take jurisdiction of the question of controversy, and it was therefore very properly admitted in the protest of the claimant in the following statement:

That the commission over whose deliberations he was appointed to preside possessed jurisdiction under the terms of the protocol of February 17, 1903, to investigate and decide upon the merits, each and all of said claims were also found and declared by him. (Claimant's Protest, p. 10.)

It is therefore evidently not to be doubted that the umpire not only had jurisdiction over all the matters in controversy in the present case, but that he himself so held, and it is not suggested that any ground for a review of the holding of the learned umpire exists because he either failed to take jurisdiction over any matter properly before him, or because he exceeded his powers in taking jurisdiction over matters not before him. It will, however, be most earnestly contended, and will be shown, that the learned umpire was guilty of that species of conduct which has been classified in this opinion under the general head of excess or disregard of jurisdiction, namely, in that he violated the terms of the protocol and in certain particulars misconceived the scope of the agreement for submission and refused to be bound by it.

THE DISPOSITION OF THE CASE.

THE EXCLUSIVE FRANCHISE.

Passing, then, from the question of jurisdiction, we approach the disposition of the case by the umpire, in the language of the claimant's protest as follows:

As will appear from the printed transcript of the proceedings before the mixed commission submitted herewith, and particularly from the opinion of the respected umpire himself (p. 207), the claim of the Orinoco Steamship Company was resolvable into four elements or items, of which the first, and perhaps the most important, was a claim for damages for the breach by the Venezuelan Government of a contract or concession for the alleged exclusive right in the claimant's assignor to navigate the Macareo and Pedernales channels of the Orinoco River with vessels engaged in foreign trade and plying

between Trinidad and certain Venezuelan ports, said channels by previous legislative decrees having been reserved for vessels engaged solely in the coastal trade and forbidden to vessels touching at foreign ports.

It will be seen from this statement that the company claimed before the commission that its concession was exclusive. It still stoutly maintains the position which it assumed before the commission in this respect.

The Grell contract of June 8, 1894, to which reference has repeatedly been made, is, in its material parts, as follows:

ARTICLE. 1. Ellis Grell undertakes to establish and maintain in force navigation by steamers between Ciudad Bolivar and Maracaibo within the term of six months, reckoned from the date of this contract, and in such manner that at least one journey per fortnight be made, touching at the ports of La Vela, Puerto Cabello, La Guaira, Guanata, Puerto Sucre, and Carupano, with power to extend the line to any duly established port of the Republic.

ART. 2. The steamers shall navigate under the Venezuelan flag.

ART. 3. The contractor undertakes to transport, free of charge, the packages of mails which may be placed on board the steamers by the authorities and merchants through the ordinary post-offices; the steamers thereby acquiring the character of mail steamers, and, as such, exonerated from all national dues.

* * * * * * *

ART. 6. The General Government undertakes to concede to no other line of steamers any of the benefits, concessions, and exemptions contained in the present contract as compensation for the services which the company undertakes to render as well to national interests as those of private individuals.

ART. 7. The Government of Venezuela will pay to the contractor a monthly subsidy of four thousand bolivars (4,000) so long as the conditions of the present contract are duly carried out.

ART. 8. The National Government undertakes to exonerate from payment of import duties all machinery, tools, and accessories which may be imported for the use of the steamers and all other materials necessary for their repair, and also undertakes to permit the steamers to supply themselves with coal and provisions, etc., in the ports of Curaçao and Trinidad.

* * * * * * *

ART. 12. While the Government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary installations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad, and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the Orinoco River in conformity with the formalities which by special resolution may be imposed by the Minister of Finance in order to prevent contraband and to safeguard fiscal interests; to all which conditions the contractor agrees beforehand.

ART. 13. This contract shall remain in force for fifteen years, reckoned from the date of its approbation, and may be transferred by the contractor to another person or corporation upon previous notice to the Government. The transfer shall not be made to any foreign government.

ART. 14. Disputes and controversies which may arise with regard to the interpretation or execution of this contract shall be resolved by the tribunals of the Republic in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations.

Does this contract confer, as claimant says, an exclusive right, and, if so, what is that right? On its face the contract has for its main object the establishment and maintenance of a line of steamers between Ciudad Bolivar and Maracaibo, touching at various Venezuelan ports. It requires certain services on the part of the company to the Government, such as the carriage of the mails without cost and public employees at half price, and grants certain privileges and exemptions to the company, such as those granted in article 8, where the Government undertakes to exonerate the company from the payment of import duties, and those granted in article 12, where

permission is given for the steamers of the company to call at the ports of Curacao and Trinidad, and for any one of the steamers leaving Trinidad to investigate certain channels of the Orinoco. The Government also agrees to subsidize the steamship line.

On the face of this contract there is no suggestion whatever of an exclusive privilege, except that contained in article 6, where the Government undertakes "to concede to no other line of steamers any of the benefits, concessions, and exemptions contained in the present contract." It is claimed, however, that construing the contract in connection with the Executive decree of July 1, 1893, an exclusive right is given to navigate the Macareo and Pedernales channels, as above stated. The decree of July 1, 1893, was as follows:

Vessels engaged in foreign trade with Ciudad Bolivar shall be allowed to proceed only by way of the Boca Grande of the River Orinoco; the Macareo and Pedernales channels being reserved for the coastal service; navigation by the other channels of the said river being absolutely prohibited. (Ralston's Report, p. 99.)

It is said that the contract must be construed in the light of the law as it existed at the time of the contract, and that so construing it an exclusive right was given to the claimant, not to navigate the aforesaid channels, for they were admittedly open to all vessels bound to the coastal service, but to navigate said channels notwithstanding the fact that the steamers of the company had called at Trinidad, and thereby, aside from the exemption contained in the contract, lost their character as coastal vessels and became vessels engaged in foreign service. It is claimed that this exclusive right was, therefore, violated by the Executive decree of October 5, 1900, which ran as follows:

ARTICLE 1. The decree of the 1st of July, 1893, which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the River Orinoco, is abolished. (Ralston's Report, p. 104.)

The law and the contract, it is claimed, having given the exclusive right as aforesaid, it became one of the benefits, concessions, and exemptions which by article 6 the Government was forbidden to extend to any other line of steamers, and which by the decree of October 5, 1900, was bestowed upon all comers. There is much force in this argument. Unquestionably the Grell contract must be construed in the light of the law as it existed when made, and the mere fact that the exclusive right does not appear on the face of the contract is immaterial.

The learned umpire, however, held that the Grell contract merely granted an exclusive permission to use the Macareo and Pedernales channels until the Government had fixed certain ports of transshipment, which it might do at any moment, and that, therefore, the exclusive privilege was terminable at the will of the Government and did not amount to an exclusive concession for the whole term of the contract. His conclusion appears in the following language:

It seems clear that the permission in this article—by which article the permission of navigating the said channels was not given to claimant in general terms and for all its ships indiscriminately, but only for the ships leaving Trinidad—would only have force for the time till the Government would have fixed definitely the transshipment ports, *which it might do at any moment*, and *till* the necessary installations were made, and not for the whole term of

the contract, which according to article 13 would remain in force for fifteen years.

* * * * * * *

What is called a concession for exclusive navigation of the mentioned channel is shown to be nothing but a permission to navigate these channels as long as certain circumstances existed. (Record, pp. 215–217; Ralston's Report, pp. 88, 89.)

On pages 218–219 of the Record, however, where he returns to the discussion of article 12, in considering the bearing of article 6 upon article 12 he uses the following language:

Now, whereas, it might be asked, if the permission to navigate by those channels, given to the steamer that on its coastal trip left Trinidad, was not one of the "benefits, concessions, and exemptions" that the Government in article 6 promised not to concede to any other line of steamers, it has not to be forgotten that in article 12 the Government did not give a general permission to navigate by the said channels, but that this whole article is a temporary measure taken to save the character and the rights of coastal service, to the service which was the object of this contract, during the time the Government had not definitely fixed the transshipment ports; and that it was not an elementary part of the concession that would last as long as the concession itself, but a mere arrangement by which temporarily the right of vessels bound to coastal service, viz, to navigate said channels, would be safeguarded for the vessel that left Trinidad as long as the vessels of this service would be obliged to call at this island, and that therefore the benefit and the exemption granted by this article was not *to navigate by said channels*, but *to hold the character and right of a coastal vessel, notwithstanding having called at the foreign port of Trinidad;* and as this privilege was not affected by the reopening of the channels to free navigation, and the Government by aforesaid decree did not give any benefit, concession, and exemption granted to this concession to any other line of steamers, a claim for damages for the reopening of the channels based on article 6 can not be allowed. It may be that the concessionary and his successors thought that during all the twenty-one years of this concession the Government of Venezuela would not definitely fix the transshipment ports, nor reopen the channels to free navigation, and on those thoughts based a hope that was not fulfilled and formed a plan that did not succeed, but it would be a strange appliance of absolute equity to make the government that grants a concession liable for the not realized dreams and vanished "chateaux en Espagne" of investors, promoters, solicitors, and purchasers of concessions. (Ralston's Report, pp. 89, 90.)

No attempt is made to follow the ratiocinations of the learned umpire in this passage, except that it is suggested that he must mean either that the Venezuelan Government having granted to the claimant's vessels leaving Trinidad the permission "to hold the character and right of a costal vessel, notwithstanding having called at the foreign port of Trinidad," and having bound itself not to "concede to any other line of steamers" this "benefit, concession, and exemption," may, nevertheless, grant this concession to the whole world without having taken any steps to make the necessary installations or fix the ports for transshipment; or he must mean to assume that the Government had, as a matter of fact, at the proper time fixed the ports of transshipment and made the necessary installations. In either event he is wrong. As to the first proposition, he is wrong on the law; on the last point he is making an incorrect assumption of fact. Possibly he intends to take both positions, in which event it is submitted that he is wrong both as to his law and his facts.

It is submitted that, even conceding the correctness of the view of the learned umpire, the contract, in the light of the law existing at the time when it was made, at least grants an exclusive permission which the Government could only terminate upon satisfying certain

ascertained conditions precedent, and inasmuch as the Government had not at any time between October 5, 1900, and the hearing of the case before the tribunal of arbitration, and, so far as appears, has not even yet fixed definitely the transshipment ports for merchandise from abroad or made the necessary installations; but, on the contrary, Trinidad still seems to be, as it was at the date of the grant and as it was at the date of the hearing, a port of transshipment for foreign freights bound from or consigned to Bolivar and the other Orinoco River ports (Record, p. 107; Morris, p. 240), it follows that whatever right the Government may have had to terminate the exclusive privilege by performing said conditions precedent, not having performed these conditions, the Government had no right to throw open the Macareo and Pedernales channels to general navigation and thereby "concede to other lines of steamers one of the benefits, concessions, and exemptions contained" in the Grell contract, which, by article 6, it had specifically agreed not to do. This is the position taken by the claimant in its memorial, where it states:

> While it may be conceded that this right of the company's vessels to engage in trade with Trinidad and still navigate through the affected channels might be *withdrawn upon the definite fixing of transshipment ports* for merchandise from abroad, the fact is that at the time of the submission of this claim to the umpire such ports of transshipment had not been fixed, nor had any installations for such purpose been made, and it may well have been that the "hope" attributed by the learned umpire to the concessionary and his successors was founded upon an absolute knowledge of physical conditions which rendered the establishment of such ports in Venezuelan waters impracticable, if not impossible. In such view, why would not absolute equity protect a concessionary who, acting upon such knowledge, had embarked large capital in establishing a steamship line, necessary to the governmental and private interests of Venezuela; and what justification can be found for comparing the business judgment of such a concessionary with the "not realized dreams and vanished chateaux en Espagne of investors, promoters, solicitors, and purchasers of concessions." (Claimant's Protest, p. 16.)

It must, of course, be admitted at once that the damages properly recoverable for the improper annulment of an exclusive concession which the Government had a right to annul on the performance of certain conditions are very different from those which would be due were the permission absolutely exclusive for the full life of the concession. The quantum of damages might depend on the validity of the suggestion of the claimant that in fact there was no probability, under the physical conditions, that the Government would see its way to establish the ports of transshipment. Whether or not this suggestion is founded in fact is, of course, impossible to say, and whether or not it is of too speculative a nature to figure before a court of justice it is unnecessary to decide, since the claimant was at least entitled to damages covering the period from August 2, 1902, the date when the rival steamers actually invaded the alleged exclusive territory of the claimants, until February 20, 1904, the date of the decision of the tribunal. At the annual rate of valuation fixed by the claimant and urged by the United States, $82,432.78, which does not seem to be an exorbitant figure (Brief and Replication of the United States, Record, pp. 75 and 124), this would amount to about $125,000, subject to possible reduction on account of any profits which might appear to have been received by the claimant during this period. Except for the fact that the claimant has apparently elected to abandon the whole contract on

account of the flagrant violation of the terms of the concession on the part of the Government, claimant would seem to have the right to bring suits from time to time and to collect damages accrued up to the date of each suit, as long as the Government refrains from establishing the ports of transshipment and making the installations.

Aside, however, from the claim to an exclusive franchise, either permanent or temporary, there was another contention which the claimant might properly have advanced in this connection, but which apparently was not at any time and is not yet suggested by it, namely, that even if it did not have any exclusive franchise whatsoever, it nevertheless did have a general franchise to establish a steamship line between Ciudad Bolivar and various other Venezuelan ports, originally good for fifteen years, and by the contract of May 10, 1900, extended for six years more; and that this general franchise was absolutely annulled, in so far as the six-year extension was concerned, by the Executive decree of the 14th of December, 1901, whereby the extension of May 10, 1900, was revoked and declared annulled and void. At the same time the remainder of the original franchise lasting until 1909 was practically revoked to all intents and purposes by the failure of the Government to give adequate protection to the claimant's vessels during the revolution, and by its absolute refusal to indicate an intention of giving such protection, clearly demonstrated by the note of the Minister for Foreign Affairs of December 16, 1901, which, in response to a respectful request for such assurance, merely transmitted a copy of the Executive decree of December 14 annulling the extension of the concession.

For a statement showing that the company had lived up to its obligations under the concession up to the time of this revocation and annullment, see the statement of the agent of the United States, Record, pages 107–110 (Morris's Report, p. 240).

Therefore, even granting that the claimant had no right to an exclusive franchise of any kind, it did have a right to a general franchise and this right was illegally revoked by Executive decree. It is to be noted, however, that this position is largely robbed of importance, first, by the fact that it has never been taken by the company, which has relied entirely upon its exclusive claim, and, second, because of the admission of the company that "the chief and indeed the only value of this contract was the exclusive right to navigate" the aforesaid channels. It will be hard, in view of this admission, to maintain that any substantial damages were inflicted upon the company by the revocation of its general franchise.

Not content with his finding that the Grell contract gave the claimant no exclusive right—perhaps not entirely satisfied with the reasoning upon which that conclusion was based—the learned umpire went on to give two more reasons for refusing to give the claimant damages for the violation of its alleged exclusive franchise. Inasmuch as it is confidently believed that both these contentions are not only unfounded, but in direct disregard of the terms of the protocol, and inasmuch as these reasons are later on the sole, and it is believed insufficient, authority of the umpire for striking out other items of the claim of the steamship company, it will perhaps be proper to discuss them in some detail at this point.

The umpire relies upon article 14 of the Grell contract, which, it will be remembered, runs as follows:

ART. 14. Disputes and controversies which may arise with regard to the interpretation or execution of this contract shall be resolved by the tribunals of the Republic in accordance with the laws of the nation, and not in any case be considered as a motive for international reclamations.

The learned umpire correctly puts aside the contention of the claimant (Record, p. 77) that the question whether or not an exclusive right is conferred by the Grell contract is not a "dispute or controversy" arising with regard to the "interpretation or execution" within the meaning of article 14.[a] True, the Government annulled the whole contract, but the question of what the contract meant and what damages are due remains. If the answer to this question does not depend on a dispute or controversy in regard to the interpretation of the contract, it would be hard to say what a dispute in regard to interpretation is. But granting that article 14 applies, what effect should be given to it in the light of the settled principles of international law? The answer may be given in the words of Secretary Bayard to Mr. Scott, minister to Venezuela, June 23, 1887:

This Government can not admit that its citizens can, merely by making contracts with foreign powers, or by other methods not amounting to an act of expatriation or a deliberate abandonment of American citizenship, destroy their dependence upon it or its obligation to protect them in case of a denial of justice. (Moore, International Law Digest, vol. 6, p. 294.)

That is to say, it is not in the power of a private citizen by private contract to affect the rights of his Government under international law. The very greatest effect which can be conceded to such a contract is that noted in the reply of the English Government to the Orinoco Trading Company in this very case, quoted by the umpire on page 219 of his opinion:

Although the general international rights of His Majesty's Government are in no wise modified by the provisions of this document, to which they were not a party, *the fact that the company have so far as lay in their power deliberately contracted themselves out of every remedial recourse in case of dispute, except that which is specified in article 14 of the contract*, is undoubtedly an element to be taken into serious consideration when they subsequently appeal for the intervention of His Majesty's Government. (Ralston's Report, p. 90.)

That is, the highest effect which can be given to such an agreement is to say that the fact of its existence is a matter fit to be addressed to the discretion of the intervening government. If, nevertheless, the Government sees fit to interfere, its rights are in no wise affected. If this be true in the ordinary situation, far more is it true in this case, where we are fortified, not merely with the general rule of international law, but also with the existence and express provisions of the protocol framed in view of this particular case among others. The correct disposition of the argument against the claimant growing out of article 14 can not be more correctly or forcibly stated than it was by Mr. Ralston, when the same question based on a substantially identical clause was presented to him as umpire in Martini's

[a] This position of the claimant apparently has the sanction of the courts of Venezuela. (See Claimant's Protest, p. 20.)

case before the Italian-Venezuelan Commission under the protocol between Italy and Venezuela of February 13, 1903. Mr. Ralston disposed of the matter as follows:

> Italy and Venezuela, by their respective Governments, have agreed to submit to the determination of this mixed commission the claims of Italian citizens against Venezuela. The right of a sovereign power to enter into an agreement of this kind is entirely superior to that of the subject to contract it away. It was, in the judgment of the umpire, entirely beyond the power of an Italian subject to extinguish the superior right of his nation, and it is not to be presumed that Venezuela understood that he had done so. But aside from this, Venezuela and Italy have agreed that there shall be substituted for national forums, which, with or without contract between the parties, may have had jurisdiction over the subject-matter, an international forum, to whose determination they fully agree to bow. To say now that this claim must be rejected for lack of jurisdiction in the mixed commission would be equivalent to claiming that not all Italian claims were referred to it, but only such Italian claims as have not been contracted about previously, and in this manner and to this extent only the protocol could be maintained. The umpire can not accept an interpretation that by indirection would change the plain language of the protocol under which he acts and cause him to reject claims legally well founded.[a] (Ralston's Report, p. 841.)

In Selwin's Case before the British-Venezuelan Commission under the protocol between Great Britain and Venezuela of February 13, 1903, Plumley, umpire, made the same ruling. (Ralston's Report, p. 322.)

The learned umpire, founding himself on the very terms of the protocol and premising that the claimant has repeatedly violated the protocol by seeking diplomatic redress, raises the question "whether absolute equity ever would permit that a contract be willingly and purposely trespassed upon by one party in view to force its binding power on the other party," and he answers his question by concluding as follows:

> And whereas it has to be admitted that—even if the trick to change a contract for regular coastal service into a concession for exclusive navigation succeeded (quod non)—in the face of absolute equity the trick of making the same contract a chain for one party and a screw press for the other never can have success;
>
> It must be concluded that article 14 of the contract disables the contracting parties to base a claim on this contract before any other tribunal than that which they have freely and deliberately chosen, and to parties in such a contract must be applied the words of the Hon. Mr. Findlay, United States commissioner of the Claim Commission of 1889: "So they have made their bed and so they must lie in it." (Ralston's Report, p. 91.)

We may agree with the umpire that he who seeks equity must do equity, but it would seem that the learned umpire had gone astray in his application of this unquestioned principle to the facts of the case. Article 14, as was pointed out by the agent of the United States (see Record, p. 99), was equally applicable to the claimant company and the Government of Venezuela. If it bound the claimant company to prosecute its rights in the "tribunals of the Republic" and not to seek diplomatic redress, it likewise bound Venezuela to prosecute any claims it might have against the company in the "tribunals of the

[a] And it is equally vicious and far more disastrous to the claimant to assume technical jurisdiction over the claim and then disallow it on its merits because of the clause in question, as Doctor Barge did.

Republic" and not by way of arbitrary executive decree.[a] That this obligation existed, whether or not it grew out of the contract or merely out of the nature of things, even the learned umpire would admit, for he says under similar circumstances in the course of his opinion in the Turnbull Case:

> Wherefore the mentioned Executive decree can not be regarded as a mere declaration that the contract was "insubsistente," but has to be regarded as an act by which the Government declared it "caduco"—that is to say, "annulled it"—which act could never have the effect of really annulling the contract, because in cases of bilateral contracts the nonfulfillment of the pledged obligations by one party does not annul the contract ipso facto, but forms a reason for annulment, which annulment must be asked of the tribunals, and the proper tribunal alone has the power to annul such a contract—this rule of the law of almost all civilized nations being in absolute concordance with the law of equity, that nobody can be judge in his own case. (Ralston's Report, p. 244.)

If, therefore, Venezuela grossly violated not only the natural principles of law and equity, but the express provisions of the contract, by annuling the concession of the claimant, without an appeal to the courts, by a mere arbitrary Executive decree, absolute equity will hardly call upon the claimant to appeal to the courts in pursuance of an agreement which in that very particular the Venezuelan Government had grossly disregarded. In the picturesque and forcible language of the learned umpire, "in the face of absolute equity the trick of making the same contract a chain for one party and a screw press for the other never can have success."

Before leaving the subject of the effect which should be given to article 14 under the principles of international law and the terms of the protocol, it may be interesting to inquire what effect was attributed by the learned umpire to similar provisions in other contracts which came before him in his judicial capacity during the history of the commission. It will be noted that in all the cases which we are now about to consider the clause binding the claimant to seek redress in the local courts and not to attempt to secure diplomatic intervention was substantially identical with the one in the case under consideration. A strictly logical arrangement might perhaps have dictated the distribution of these quotations from the umpire's opinion through the text supra, but they are collected at this point in order to furnish a basis for a fair estimate of the accuracy and consistency of the logical processes of the umpire. The following analysis of the rulings of Doctor Barge on this point is quoted substantially in extenso from Professor Moore's monumental digest of international law. It is quoted rather than paraphrased in order to secure for this opinion the added authority due the absolute impartiality of an abstract treatise which fortunately happens to deal with

[a] See, in accord with this view, the Delagoa Bay Case, where the United States Government declared that it was "not within the power of one of the parties to an agreement first to annul it and then to hold the other party to an observance of the conditions as if it were a subsisting engagement." (Moore's International Law Digest, Vol. VI, p. 297.) See also the case of Day & Garrison before the mixed commission under the convention between the United States and Venezuela of December 5, 1885, opinion of Judge Little (Moore's International Arbitrations, Vol. VI, p. 30). See also the case of North and South American Construction Company *v.* Chile, under the convention between the United States and Chile of August 7, 1892 (Moore's International Arbitrations, Vol. VI, p. 302).

the precise question under consideration, as well as for the reason that no paraphrase could do more than appropriate the thought of the original without adding to the clearness of its expression. Professor Moore's discussion is as follows:

The case [Woodruff Case; see Ralston's Report, p. 158] was then referred to Mr. Charles Augustinus Henri Barge, of Holland, the umpire of the commission. As it still did not appear that the claimants had appealed to the Venezuelan courts for a decision on the question of liability, Mr. Barge held, October 2, 1903, that they were not as yet entitled to apply to the commission, and dismissed the claim "without prejudice on its merits." He construed article 20 of the contract as constituting, till an application should have been made to the Venezuelan courts, a waiver of the right to appeal to other judges, "except naturally," he added, "in case of denial or unjust delay of justice, which was not only not proved, but not even alleged." He thus admitted that a denial of justice would have justified the commission in taking jurisdiction of the claim; and he also expressly declared: "A contract between a sovereign and a citizen of a foreign country can never impede the right of the government of that citizen to make international reclamation, wherever according to international law it has the right or even the duty to do so, as its rights and obligations can not be affected by any precedent agreement to which it is not a party." This did not, however, as he maintained, "interfere with the right of a citizen to pledge to any other party that he, the contractor, in disputes upon certain matters will never appeal to other judges than to those designated by the agreement, nor with his obligation to keep this promise when pledged, leaving untouched the right of his government to make his case an object of international claim whenever it thinks proper to do so, and not impeaching his own right to look to his government for protection of his rights in case of denial or unjust delay of justice by the contractually designated judges."

The effect of the renunciatory clause was again considered by Mr. Barge in the case of the Rudloffs [Ralston's Report, pp. 192–239] with results altogether favorable to the claimants. In this case a claim was made for damages for the breach by the Venezuelan Government of a contract for the construction by claimants of a market house at Caracas. Article 12 of the contract provided:

"The doubts and controversies that may arise on account of this contract shall be decided by the competent tribunals of the Republic in conformity with the laws and shall not give reason for any international reclamations."

In this case a suit had actually been brought by the claimants and was still pending in the Venezuelan courts. Nevertheless, Mr. Barge, on November 4, 1903, held that the renunciatory clause "by itself does not withdraw the claims based on such a contract from the jurisdiction of this commission, because it does not deprive them of any of the essential qualities that constitute the character which gives the right to appeal to this commission," and that it was open to the commission to determine whether, under all the circumstances of the case, the "absolutely equity," which, according to the protocol, was to be the rule of decision, did not justify the assertion of jurisdiction. On similar grounds he also rejected the contention of the agent of Venezuela that jurisdiction could not be asserted because by article 216 of the Venezuela civil code one party to a suit pending in court could not withdraw it without the consent of the other party, which consent had not in the present case been given. An award was subsequently made in favor of the claimants for $75,745 United States gold.

Professor Moore then considers Mr. Barge's opinion in the case of the American Electric and Manufacturing Company against Venezuela, which was decided on November 18, 1903, but as that case went off on another point it is not necessary to consider it further here. He then gives the ruling in the present case, which was decided February 20, 1904, and which has already been stated in the text, and proceeds:

The last case in which the renunciatory clause was discussed by Mr. Barge was that of George Turnbull et al., who presented petitions on account of the Manoa Company (Limited) and the Orinoco Company (Limited) against Vene-

zuela. (Ralston's Report, p. 239.) The contracts in this case contained the following clause:

"ART. II. Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic."

Mr. Barge, finding that there had been no application by the claimants to the Venezuelan courts, disallowed the claim. His decision was rendered on April 12, 1904. The terms in which it denied a remedy to claimants were far more sweeping than those employed by him two months before in the case of the Orinoco Steamship Company, and were in fact such as to preclude altogether the exercise of the equitable jurisdiction which he had asserted in still earlier cases and which, six months before, actually produced an award in favor of claimants in the Rudloff Case. In a word, he declared in the Turnbull Case that, as the claimants had "deliberately contracted themselves out of any interpretation of the contract and out of any judgment about the ground for damages for reason of the contract except by the judges designed (designated?) by the contract," they had, in the absence of a decision by those judges that "the alleged reasons for a claim for damages really exist," "no right to these damages, and a claim for damages which parties have no right to claim can not be accepted." It may be superfluous to remark that, according to this view, there can be no room whatever for international action, in diplomatic, arbitral, or other form, where the renunciatory clause exists, unless indeed to secure the execution of the judgment of a local court favorable to the claimant; for, if the parties have "no right to claim" damages which the local courts have not found to be due, it is obvious that international action of any kind would be as inadmissible where there had been an adverse judgment, no matter how unjust it might be, as where there had been no judgment whatever. (Moore's International Law Digest, Vol. VI, pp. 304–307.)[a]

As will be seen from this analysis, Doctor Barge assumed no less than four distinct and inconsistent positions in regard to the question of the validity and effect of the clause under consideration: First, in the Woodruff Case, October 2, 1903, he held that the clause in question was binding except in the case of a denial of justice and dismissed a claim where no attempt had been made to appeal to the local courts, but without prejudice as to the merits of the case. Second, November 4, 1903, he held in the Rudloff Case, where a suit had been already brought by the claimants against the Government and was at the time actually pending in the courts, that "absolute equity" permitted the commission to give relief, notwithstanding the clause in the contract binding the parties to appeal to the local courts, and he did actually make an award in favor of the claimants for $75,745. Third, February 20, 1904, in the present case, he refused to allow the claim in great part, giving as one of his reasons that the claimant had bound itself by contract to appeal to the local courts, and that "absolute equity" forbade that a contract should be made a chain for one party and a screw press for the other. And fourth, and lastly, in the Turnbull Case, April 12, 1904, he held that the clause precluded the success of any claimant who had not actually sued in the local courts and recovered a verdict, and he therefore made final disposition of the case, the sweeping language of his opinion making no provision for any exception whatsoever, even in the case of the plainest denial of justice.

The opinions of the learned umpire are absolutely irreconcilable and do not even show a consistent progression. It was at one time thought that equity varied with the length of the chancellor's foot.

[a] In two other cases decided by the commission damages were awarded by the concurrent action of the American and Venezuelan Commissioners, in spite of a similar clause in the claimant's contract. (Moore's International Law Digest, Vol. VI, p. 307.)

It is perhaps not entirely unfair to suggest that in this case "absolute equity" seems to have varied with the seasons of the year.

In conclusion, then, it may be said that the reason given by the umpire as one ground for his opinion that no damages can be given for the violation of the alleged exclusive franchise of the claimant—namely, that the claimant had contracted itself out of its right to avail itself of diplomatic relief—is, under the circumstances of the case, and bearing in mind the condition of the administration of justice in Venezuela, in absolute deregard of the terms of the protocol, opposed to the plain principle of justice that he who seeks equity must do equity, and inconsistent not only with the decisions arrived at by other judges before the mixed commissions but absolutely inconsistent with the various opinions expressed by the learned umpire himself on the other occasions when the question arose before him. This ruling seems, as Judge Penfield remarked in his memorandum upon the case, to be "in the teeth of the express terms of the protocol," and, therefore, wherever it is a determining factor in the case, to qualify as a just cause for asking for a rehearing before a competent and impartial tribunal.

As a third reason for disallowing the claim of the company for damages for the annulment of its alleged exclusive franchise, the umpire cites article 13 of the Grell contract, which says that the concession "may be transferred by the contractor to another person or corporation upon previous notice to the Government." Doctor Barge held that the evidence shows that this "notice has not been previously (indeed ever) given," and therefore the shipping company had no right to transfer it and the steamship company acquired no rights under it. To answer this technical objection according to its technicality seems easy. Article 13, as above stated, merely says that the concession may be transferred "*by the contractor upon notice.*" It may well be, as suggested by the claimant, that this clause merely refers to the original contractor, Grell or Sanchez. Even if this suggestion is incorrect, as Judge Penfield points out, the notice required is as to the transfer of the contract itself and has nothing to do with notice of the transfer of the claim for damages for breach of the contract, which is the matter in hand.

But, passing from these technicalities to the consideration of the question in the light of "absolute equity," there can be no doubt that, even if notice is required, no particular form of notice is required. All that equity can possibly demand is substantial and practical knowledge on the part of the Government of the transfer in due season, and this knowledge the Government unquestionably had. As has been said before, the rights of the shipping company in the contract transferred from Sanchez had been repeatedly recognized by the Venezuelan Government, and the rights of the American stockholders in this company were also known to the Venezuelan Government. As soon as the disturbed conditions of the country permitted, the transfer from the Orinoco Shipping Company to the claimant company was notified to the Government of Venezuela by the filing and inscribing of a copy thereof in the registry of commerce of the federal district at Caracas, and the publication thereof by the duly authorized Government agents in the Gaceta Municipal; and prior to the meeting of the mixed commission, as appears in the reply

of the defendant Government (Record, p. 169; Ralston's Report, p. 119), the Government of Venezuela was well aware of this register of the transfer to the claimant company.[a]

The learned umpire, therefore, seems to be in error as to the facts when he states that notice had never been given.

But aside from this, inasmuch as this case is to be decided by absolute equity, and inasmuch as the real parties in interest, notwithstanding the technical transfer, remained the same, namely, the American stockholders in the shipping and steamship companies; and inasmuch as international law, as well as municipal law, looks through the legal personality of a corporation in the interests of justice and equity, it would seem that according to the ordinary principles of justice, as well as according to the absolute equity of the protocol, the question of the technical notice required by the contract in this case was wholly unimportant. We have here, then, a position assumed by the learned umpire which is so incorrect in law and fact as to amount to a failure of due process of law; such an arbitrary denial of justice as justifies, when exercised in regard to a determining factor of the case, a demand for a rehearing before a competent and impartial tribunal.

Summing up the conclusions of the learned umpire in regard to the claim of the steamship company for damages for the breach of its exclusive concession, we find that he has disallowed the claim for three reasons:

In the first place on the merits. He held that the contract did not in fact give an exclusive claim. As to this point he was partially right and partially wrong, but the concessionary seems to have been partially contributory to his error on account of the way in which the case was presented to the commission. We find under this head nothing which would in itself justify a demand for a rehearing.

Secondly, the umpire gives as a reason for disallowing this claim the fact that the claimant had contracted itself out of diplomatic relief. This holding, as we have seen, is contrary to international law and the terms of the protocol, and constitutes such a disregard of the terms of the submission as would justify a demand for a rehearing were this holding material.

And, thirdly, the umpire gives as a reason for his ruling the alleged fact that no notice of the transfer of the concession had been given to the Government according to the terms of the concession, making, as we have seen, in so holding, such serious errors of law and fact as would amount to a denial of justice were this point material.

That is to say, the umpire has given three answers to the claimant's contention on this point. The first answer on the merits partially wrong, the second and third answers amounting, however, to a disregard of the terms of the protocol and a denial of justice. Inasmuch, however, as the umpire has squarely held on the merits that the company had no exclusive franchise, and inasmuch as the error on this point is not such as to justify a demand for a rehearing, it would seem that a demand for a rehearing can not be sustained

[a] The Venezuelan Government was directly advised of the steamship company's claim as early as September 15, 1902, by Minister Bowen. (See Record, p. 94; Diplomatic Correspondence, p. 96.)

because of the two other reasons assigned by the umpire, although if material to the decision of the question those rulings would justify such a demand.

But it is submitted that if in the course of our investigation we find that these same incorrect holdings have been the only ground for the umpire's decision on other points, although these points be relatively unimportant, it may fairly be remembered, in considering whether or not the whole case ought to be reopened on account of the holdings on the minor points, that these same insufficient reasons have been given in support of the umpire's ruling on the main contention of the case. The exact influence which these inadmissible reasons had on the umpire's mind can not be told. All we can say is that he thought them important enough to give after having already passed on the merits of the case and already fallen into error in so doing.

The 100,000 bolivares.

The second item of the company's claim consists in the demand for 100,000 bolivares, or $19,219.19, which the Venezuelan Government expressly agreed to pay to the company's assignor under the terms of the settlement of May 10, 1900, above referred to. It will be remembered that at this time the shipping company gave up claims amounting to more than half a million dollars in return for 100,000 bolivares down and 100,000 bolivares to "be paid in accordance with such arrangement as the parties hereto may agree upon, on the date stipulated in the decree of the 23d of April ultimo, etc.,"[a] and the extension of the concession for six years, as before mentioned. In spite of this solemn settlement, and in spite of the fact that the Venezuelan Government has repeatedly admitted its obligation to pay 100,000 bolivares, nothing has ever been paid. The umpire disallows this claim for three reasons. First, he says that "whereas nothing whatever of any arrangement in accordance with which it was stipulated to pay appears in the evidence before the commission, it might be asked if on the date this claim was filed this indebtedness was proved compellable." This objection seems to be completely disposed of in the protest of the claimant, which treats this point as follows:

Replying to the first objection, it need only be remarked that, in the absence of any time fixed for the payment of an agreed sum agreed by the parties to be due and payable, both law and equity agree that it shall be paid "within a reasonable time."

The amount not having been paid within a year after the agreement, in response to an inquiry from you on the subject, Mr. Russell, on July 14, 1901 (diplomatic correspondence), reported that he had "had a long interview with the foreign minister on this subject, and he admitted that the whole of the 200,000 bolivares had to be paid in gold," * * * and "that in accordance with article 2 of the contract the commission has to fix the date for payment of the second 100,000 bolivares."

Subsequently, Mr. Russell, in response to a further inquiry on the subject, cabled, under date of July 31, 1901:

"Second installment Orinoco Shipping and Trading Company not paid. Government of Venezuela made the proposal to pay 1,000 bolivares a month."

In the absence of any reasonable excuse for the delay, a failure to pay within fifteen months would surely support a complaint that payment had not

[a] The papers on file do not give this decree, etc., but it appears not to be material.

been made within "reasonable time" and would sufficiently answer any suggestion that the demand was not proved "compellable," particularly when considered in the light of the suggestion by the debtor to pay at the rate of $200 a month, at which rate more than ten years would have elapsed before full settlement would have been effected. (Claimant's Protest, p. 25.)

The second reason given by the umpire for disallowing this claim is the one already discussed at such great length in considering his rulings in regard to the alleged exclusive franchise, namely, that the parties had contracted themselves out of diplomatic relief, and that the diplomatic correspondence showed that the claimant had repeatedly violated this provision of the contract. The learned umpire rests his argument on this point, in the main, on a reference to his discussion of this question in the earlier part of the case, and this opinion will follow his example. It is to be noted, however, that in his concluding paragraphs he rather advances beyond the position assumed in his earlier argument in this case, and approaches the position which he assumed later in the Turnbull Case, when he says:

And whereas when parties agree that doubts, disputes, and controversies shall only be decided by a certain designated third they impliedly agree to recognize that there properly shall be no claim from one party against the other but for what is due as a result of the decision of any doubts, disputes, or controversies by that one designated third.

For which reason—in addition to everything that was said already upon this question heretofore—in questions on claims based on a contract where any such stipulation is made, absolute equity does not allow to recognize such a claim between such parties before the conditions are realized which in that contract they themselves made conditions sine qua non for the existence of a claim. (Record, p. 223; Ralston's Report, p. 92.)

The third reason given by the umpire for disallowing this item is the same as his third reason for disallowing the claim for the alleged exclusive concession, namely, that—

It is not less true that as shown by the evidence this transfer [from the trading company to the steamship company] was never notified to the Government of Venezuela.

And whereas, according to the Venezuelan law, in perfect accordance with the principles of justice and equity recognized and proclaimed in the codes of almost all civilized nations, such a transfer gives no right against the debtor when it was not notified to or accepted by that debtor;

* * * * * * *

And whereas, if the provisions of local legislation, far from being objections to the rules of absolute equity, are quite in conformity with those rules, it would seem absolutely in contradiction with this equity not to apply its rules because they were recognized and proclaimed by the local legislation of Venezuela. (Ralston's Report, pp. 92, 93.)

Therefore the learned umpire held that in strict accord with absolute equity, which happened for the time being to be identical with the local laws of Venezuela, this claim must be disallowed.

It is hardly necessary to offer any observations in regard to this ruling. Absolute equity in English-speaking countries does not require previous notice to the debtor in order to make a valid assignment of the debt. As long as the debtor is protected, if he pays the assignor in good faith, it is not the theory of the English common law that he has any particular interest in the holder of the equitable interest in the debt. Under the circumstances of the case, the ruling of the umpire seems to have been based, not merely on a technicality, but a technicality founded in the local legislation of Venezuela on a point where it differs from the local law of the United

States. The result of his application of this technicality is to furnish one of the arguments for denying an admittedly just debt long overdue, when, as has been seen before, the Venezuelan Government in fact had all the notice necessary to protect it in every possible way against any damage whatever arising from the transfer of the claim; when it is not suggested that the slightest damage did in fact result; and when, after all, as has been before noted, the transfer itself was nothing but a technicality, and the real parties in interest after as well as before the transfer were the American stockholders, first of the shipping and then of the steamship company, who had not changed their identity and whose substantial rights should be considered by a tribunal administering absolute equity.

To sum up on this point: This admittedly just debt, long overdue, was disallowed by the umpire on three grounds. The first involved an absurd error of law; the second, a direct disregard of the terms of the protocol, and the third not only disregarded the terms of the protocol, but amounted to an outright denial of justice. So far as this item of $19,219.19 is concerned, a perfect case exists within the limits of the doctrines heretofore laid down for demanding a rehearing of this case before an impartial and competent tribunal.

Various items amounting to $147,638.79.

The third element in the claim of the steamship company consisted of various items amounting in the aggregate to $147,638.79.

Of this amount $49,978.76 was for items of service, detentions, and national imposts illegally exacted prior to April 1, 1902, the date of the assignment to the Orinoco Steamship Company.

This item was disallowed by the umpire on the ground that it was a debt due the shipping company and that the transfer to the steamship company had not been notified to the Venezuelan Government. This was his only reason. Nothing more need be said on this point, as we have seen that it affords just grounds for demanding a rehearing of all items decided on this basis, among them this item for $49,978.76, before a competent and impartial tribunal.

Out of the $147,638.79 above mentioned, a claim of $61,336.20 was made for losses of revenue from June to November, 1902, caused by the blockade of the Orinoco. This item, as is admitted by the claimant in its protest, was disposed of on its merits, and whether rightly or wrongly decided affords no ground for objection or for a rehearing.

Finally, the umpire allowed $27,692.31 out of a total sum of $28,461.53 claimed for various detentions and use of vessels belonging to the claimant by the Government officials subsequent to the date of the transfer, April 1, 1902. This item naturally affords no ground for objection. (Claimant's Protest, p. 28.)

It therefore appears that two elements in the claim of the company, amounting in the aggregate to $69,197.95, of which $19,219.19 was unquestionably and admittedly due the claimant and $49,978.76 was due, subject, perhaps, to slight corrections, were disallowed by the umpire in absolute disregard of the terms of the protocol and in such plain violation of justice and equity as to amount to a denial

of justice and to warrant, in so far as these two items are concerned, a demand for a retrial before a competent and impartial tribunal.[a]

When it appears that as to such a considerable although relatively minor portion of the company's claim the umpire has acted in disregard of the terms of the protocol, and when the same reasons which vitiate his decision in regard to this part of the claim are relied on by him in deciding the more important contention of the claimant;[b] when it is impossible to tell how much weight these vicious reasons may have had in influencing his decision, and when it appears that the umpire was clearly wrong in his decision on the merits of this main contention of the claimant; when the whole opinion of the umpire exhibits not only repeated errors of fact and law and glaring inconsistency with other opinions pronounced by the same umpire during his term of service upon the commission, but also a tone which, to say the least, is hardly judicial, it is believed that just ground has been shown, in the light of the general principles of international law and the practice of the United States and Venezuela, to ask for a full rehearing of the entire case on its merits before a competent and impartial tribunal.

THE ATTITUDE OF THE DEPARTMENT IN REGARD TO A REHEARING.

The conclusion which has been reached in this opinion—namely, that the Orinoco Steamship Company's Case should be retired before a competent and impartial tribunal—is not a new position, but one which has already received the approval of the Department. This particular case has, however, not been discussed at any great length in the dispatches, having been grouped along with the other more important Venezuelan cases.

On January 28, 1905, the Department cabled Minister Bowen to "try to get the Venezuelan Government to agree to * * * the revision of the Olcott award [Orinoco Steamship Company's Case] and the trial of all these cases absolutely on their merits."

On January 30, 1905, Mr. Bowen, acting in accordance with this instruction, asked the Venezuelan Government to agree to a rehearing of the case. On February 2 the Venezuelan minister for foreign affairs replied as follows:

> * * * As to the revision of the award of Mr. Olcott, although it is not known that any protest about the matter has been made by him, the case, in the opinion of the Federal Executive, would be of such gravity, if it were made, that in its judgment all the protocols would be annulled which your excellency signed in Washington in the name and as the representative of Venezuela. (See inclosures with Bowen's dispatch No. 385, February 5, 1905.)

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[a] Nothing has been said in regard to the claim of the company for $25,000 as counsel fees. This item shared the fate of the larger items. Failure to allow counsel fees could in no case be a ground for rehearing. If a rehearing is granted the point can of course be raised again. See El Triunfo Case.

[b] It should be observed, in considering the relative importance of the items in regard to which the umpire clearly disregarded the terms of the protocol, in order to decide whether or not they justify a demand for a rehearing of the entire case, that the items improperly disallowed might well be compared rather with the amount which we have seen was really due the claimant rather than with the amount of its claim. On this basis it appears that the items thrown out "in the teeth of the protocol" amounted to more than a third of the entire claim.

To this the Department responded March 10, 1905, No. 24

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This was communicated to the Venezuelan Government by M Bowen March 19, 1905. To this the Venezuelan Government r sponded in general that there were "no pending questions" betwee it and the United States, and remarked specifically in regard to th Orinoco Steamship Case that "one of the matters which is treate by his excellency Mr. Hay is found contained in those decisio [namely, the decisions of the mixed commission under the protoc of 1903], which is the same as if we should say that it has alread the potency of things adjudicated, and because the Venezuelan Go ernment would consider it as an offense to the honor of the Dutc nation and of the Dutch umpire, Mr. Harry Barge, who decided th Olcott claim, acquiescence could not be given to such an unseasonab request, without failing in the respect which is due to that whic has been agreed upon, and it would be at the same time even a reaso for believing that not even a new agreement, judgment, or arbitratio could be executed."[a]

Here the case rests. It is recommended that it now be taken u and pushed to a satisfactory conclusion.

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IN THE MATTER OF
THE UNITED STATES AND VENEZUELA COMPANY
v.
VENEZUELA.

To this the Department responded March 10, 1905, No. 242:

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MEMORANDUM.

(MAY 24, 1906 (DECEMBER 8, 1906).)

The controversy of the United States and Venezuela Company with the Venezuelan Government relates to certain property rights claimed by the company in Venezuela, namely, (1) an asphalt mine called " Ynciarte " and (2) a concession for the building and operation of a railroad in Venezuela in connection with the mine.

The following is a statement of what would appear to be the essential facts in the case as it is presented to the Department by the company:

A definitive title to the asphalt mine in question was granted by General Castro on June 18, 1900, to a Dr. Pedro Guzman, of Maracaibo, Venezuela, said mine being located some 70 miles west of that city. The wording of this title is as follows:

> It is now decreed in favor of Citizen Doctor Pedro Guzman, his heirs or assigns, the mineral concession of 300 hectares named " Ynciarte," situated in the municipality Chiquinquira, district of Maracaibo, in the State of Maracaibo, reference to which is made in the record of title No. 84. The present title will be protocoled in the office of the register where is situated the concession, and will give the right to the concessionnaire and his successors in perpetuity for the use and enjoyment of said mineral property in compliance with the conditions determined in the Code of Mines.

General Castro was, at the date of the granting of the title, the supreme head of the Republic, and his action in granting said title was taken under his authority as such supreme head, and also by virtue of the Venezuelan mining laws then in force.

Doctor Guzman, on February 5, 1901, sold the mine for $25,000 to George W. Crichfield, a citizen of the United States, who was acting as the agent of a syndicate composed of American citizens, afterwards incorporated (June 12, 1901) in New Jersey under the title of the " United States and Venezuela Company," which had been formed for this specific purpose. The sale was recorded on the date thereof in the public register at Maracaibo, and later, on March 22, 1901, it was also placed on record in the ministry of fomento.

It further appears that an escrow agreement was entered into between the agent, Crichfield, and Doctor Guzman whereby in purchasing the mine the company was not obligated to take title and pay the purchase money except upon certain condition, to wit, the granting by the Venezuelan Government to Crichfield of a concession for the building and operation of a railroad. It is further alleged in this connection that President Castro was advised that the consummation of the purchase of the mine was conditioned upon the grant of the said railroad concession. The contract or concession for a railroad was granted by President Castro through his authorized agent, the Venezuelan minister of public works, on April 20, 1901.

Certain conditions specified in the contract are as follows:

1. The grantee was granted immunity from all national taxes or contributions, with the exception of certain stamp fees and mining dues. On this point article 12 of the concession reads as follows:

Neither this enterprise nor the products of its mines can be burdened with any kind of national taxes or contributions, except stamp fees levied by the department of public instruction and the dues prescribed by the now existing law relating to mines.

2. The grantee was also immune from all import duties on material, etc., required in the construction of the railroad and the operation of the mines and the refining and transporting of the products of the mines. Articles 13 and 14 provide:

The contractor is allowed to enter free of import duties and free of any other tax, through the custom-house of Maracaibo, all the material for the construction of the railroad, rolling stock, tools, machinery and all other things required for the working of the mines and the refining and transportation of their products. It is understood that every importation will have free entry and for that purpose a copy of the original order must be presented in order to obtain a permit as established by the rules and regulations relating to these matters.

Likewise the contractor has the right of importing free of duties and of any other sort of tax, the steamers, launches, lighters, boats, with all their accessories, hoops, and shooks, boards for boxing, iron nails, machinery for manufacturing barrels or boxes, also paper and envelopes, printed or lithographed, blank books and all other stationery for the exclusive use of the company, all the legal formalities prescribed by the rules and regulations of the law on this matter being complied with.

3. The construction of the railroad was to begin within six months from the date of concession and it was to be completed within one year after commencement. Article 15 provides:

The contractor will begin working on the construction of the railroad within six months (or before if he so desires), due presentation and acceptance of the plans of the railroad having taken place; the time to count from the date of approval of this contract; and shall finish the work one year after having commenced same.

4. The concession was for the period of fifty years. Article 18 provides:

This contract shall hold good for fifty years from this date, after which time the railroad with rolling stock and all other appurtenances will be turned over, in good condition, to the government.

The United States and Venezuela Company became domiciled in Venezuela on August 1, 1901, and on January 2, 1902, Crichfield transferred to it the railroad concession and mine, said transfer being approved by the Venezuelan Government on January 30, 1902. The company then issued $1,000,000 of stock and $500,000 of mortgage bonds to secure funds to build the railroad, etc.

The company sets forth on pages 4–7 of its original petition, dated January 6, 1905, the steps which it took pursuant to this grant, and in its supplemental petition, dated April 2, 1906, the specific things done and the money outlay attendant thereon were briefly set out, as follows:

Under this concession your petitioner has expended about $600,000 in gold, has canalized the rivers and made them navigable, cleared the forests, constructed and operated the railroad, and built and put in operation a large mining and refining plant furnishing steady employment to about 1,000 Venezuelans.

For some time after the completion and operation of the properties the company enjoyed the privileges and immunities granted by the

contracts. Later, however, the Venezuelan Government imposed certain new taxes—(1) an increased hectare and exploitation tax and (2) new export and import duties. These taxes are alleged by the company was only liable for stamp fees and such dues as were pre- On this point it is shown that under article 12 of the concession the company was only liable for stamp fees and such duties as were prescribed by the mining laws in force at the time of the grant, and that the only tax then existing was a hectare tax of 10 cents per annum on each hectare of the mine. The mining law of 1901 provided in article 96 as follows:

All mineral concessions, whatever their nature may be, will pay an annual impost of fifty hundreds of a bolivar (10 cents) for every hectare; if they shall be in exploitation will pay besides as the only additional impost on its product the following:

1st. Mines of gold, platinum, silver, and precious stones, one-half per cent on the crude product of the mine.

2d. Mines of copper and other materials, and also of coal, asphalt, talco, petroleum, and all others not named here will only pay the said impost of fifty hundreds of a bolivar annually for every hectare, without any other impost or taxes on its products.

On January 23, 1904, a new mining code was adopted. Article 96 of this code reads as follows:

Every mineral concession whether of bed or of vein whatever may be its nature will pay as an impost of mines 2 bolivares (40 cents) annually for each hectare, whether the superficial area of the mine pertains to the nation or to individual, and if the mine should be in exploitation it will pay in addition thereto 3 per cent on the gross product of the mine.

That is to say, according to this law the hectare tax was raised from 10 cents per hactare to 40 cents per hectare. On the 300 hectares of the Ynciarte mine this would amount to $120 instead of the $30 exacted under the mining law of 1901.

The new law also added an exploitation tax of 3 per cent on the gross product of the mine, which, being transposed into dollars and cents, amounted, according to the arbitrary valuation of $20 per ton fixed by the Government, to 60 cents per ton—although, as noted in the reply of the Venezuelan Government to a petition of the company dated January 7, 1905 (see p. 123 of this memorandum), the Government, in response to the protest of the company against the arbitrary and unjust valuation of $20 per ton, reduced the valuation to $16 per ton.

By an executive decree relating to mines, dated June 21, 1904, other taxes were added which, according to petitioner, are not only in contravention to its rights under the Crichfield concession, but are illegal even according to the Venezuelan constitution, since they are promulgated by the executive and not passed upon by the legislative department. Article 3 of this decree reads as follows:

Every ton of asphalt * * * exported through the customs-house of the republic will pay in addition to the imposts and fines which are indicated by the Code of Mines, 4 bolivares (80 cents) as export duties. There remains excluded from this duty the asphalt and other substances above expressed which they export in virtue of contracts celebrated by the National Government, and already approved by the Congress of the republic, and those which in future may be celebrated by the Federal Executive in virtue of this resolution, because in this case the individual or companies will pay the duties which may be designated in their respective contracts.

According to this decree, therefore, an export tax of 80 cents per ton was added to the other charges imposed upon the products of the petitioner's mine.

The Government further added to the burdens imposed upon the company by imposing the regular importation taxes on certain bags and other articles imported by the company for use at the mine and on the railroad for the packing and shipping of asphalt.

It will thus be seen that in spite of the fact that the concession provides that "neither this enterprise nor the products of its mines can be burdened with any kind of national taxes or contributions, except stamp fees levied by the department of public instruction, and the dues prescribed by the now existing law relating to mines," and in spite of the fact that the then existing law relating to mines merely imposed a hectare tax of 10 cents per hectare, or $30 in all, upon the petitioner's mine, the Government, according to the provisions of the new code of 1904, was now authorized to levy: First, a hectare tax of 40 cents per hectare, or $120; second, an exploitation tax of 3 per cent on the gross product of the mine, or 60 cents per ton; third, an exportation tax of 80 cents per ton; fourth, regular import duties upon all bags and other material imported for use in the mine or on the railroad in connection with the operations of the company.

But this is not all. Article 4 of the executive decree of June 21, 1904, already referred to, goes on to provide as follows:

> In the future the mines of asphalt * * * will be authorized by special contracts which will be celebrated by the Federal Executive, and in which they will stipulate the duties which the contractors shall pay, and the utilities which the national treasury shall obtain from their exploitation, it being established from this date that these contractors must pay as a minimum to the Government of the Republic 25 per cent of the net product of the exploitation of said mines. The contracts to which the present article refers will be considered as special titles to mines, and consequently will not have to be submitted in the future to the consideration of the National Congress.

It will be seen that this article provides for indefinite taxation regulated by special contract in the case of all asphalt mines authorized "in the future." The petitioner points out that if, as the Government contends, the company's mining concession is invalid it falls within the purview of this article, and the company must negotiate terms with the Government through a "special contract," the only definite assurance in regard to the terms of this contract being that its terms must provide for a minimum tax of 25 per cent on the net product of the exploitation of the mine.

As a matter of fact, the Venezuelan Government has assessed the taxes and duties specified in the foregoing provisions of the mining code and the Executive decree of 1904, with the exception of the 25 per cent or upward exploitation tax provided for in article 4 of the Executive decree of June 21. No steps appear to have been taken on the part of the Government to enforce this provision of the decree so far as the petitioning company is concerned.

The company resisted the imposition of these taxes and petitioned the Venezuelan Government, claiming exemption under the privileges and immunities granted by its railroad concession, heretofore set out.

From the documents cited by the company and set out in their supplemental petition (p. 8 et seq.) it appears that, in answer to the

petition of the company, the Venezuelan Government, on October 22, 1904, published a resolution in the Official Gazette reading as follows:

There has been considered the petition directed to this ministry by Señor David Fleming, resident of the State of Zulia, and an attorney in fact of the United States and Venezuela Company, in which he asks that the National Government make a declaration that not only the mine which is to-day the property of the company, named Ynciarte, and situated in the said State, but also the asphalt which from it is exported, shall not pay the duties indicated by the resolution regulating the said mineral, but only on the superficial area as established by the anterior law regarding the matter, in accordance with the twelfth article of the contract celebrated on the 20th of April, 1901, for the establishment of a steam tramway destined to the exploitation of the said mine by the ministry of public works and Mr. George W. Crichfield, and of which the said company is assignee. The Citizen Provisional President of the Republic, in view that according to the constitutional disposition the said contract has not been approved by the National Congress, and that consequently the petition touches on a point of right to which it does not correspond to the federal executive to resolve, orders the return to the said Fleming of the petition to which reference is made.

Also on October 21, 1904, the Venezuela Government issued a decree relating to mines, which reads as follows:

In consideration that article 127 of the present code of mines prescribes that those mineral concessions which are encountered in vigor on the date of the promulgation of said law remain confirmed, adapted, and submitted to the prescriptions which it establishes, and that to-day there has transpired six months since the 19th of April of the present year, without which certain owners of mines having satisfied the imports to which they are obligated; the Citizens Provisional President of the Republic in harmony with the prescriptions of the only paragraph article 63 of the said code, declares extinct the mineral concessions whose proprietors have not paid the imposts referred to. Those mines whose imposts have been satisfied according to said legal disposition will continue in all their force and vigor. In a separate resolution will be published the list of those concessions which have fallen in the penalty of extinction.

The new taxes referred to in the foregoing resolution and decree were never paid by the company, and protest was made on December 21, 1904, against such taxes—at the same time payment being tendered of the old hectare and 3 per cent taxes. The Venezuelan Government, in a decree dated January 7, 1905, replied to the petition in the following terms:

There has been considered in the cabinet the petition which under date of December 21st ult., you directed to this Ministry expressing that notwithstanding that you are impressed with the intimate conviction that the company which you represent is not obligated to pay the imposts established by the code of mines in existence, and by the resolution dictated on the 21st of June of the past year, that you have ordained the payment of these imposts on the superficial area and also the 3 per cent on the gross product of the mine Ynciarte, without reduction or waiving of those rights alleged by you in anterior representations and with the sole object to avoid damages to the company. You add that you have sent the receipts for the imposts on the superficial area until the 18th of December, 1904, and that you do not do the same thing with the imports of 3 per cent on the exploitation because of expecting that the National Government will ordain a liquidation which will fix the value of the asphalt, because the company can not accept the estimate in regard to the matter made by the administrator of the custom-house of Maracaibo. The Federal Executive resolved that this department should not accept the receipts of the payments made by the company which you represent, meanwhile that you declare that you do not believe it owes said sum, and that the payment is made only in order to avoid damages, and under these conditions the Government can not receive any sum whatever unless the company has no inconvenience in submitting itself in everything to the disposition of the code of mines governing to-day and the

resolution regulating the matter of asphalt, petroleum, etc., and in virtue of this we return to you annexed to this note the receipt of payment of imposts on the superficial area made by you up to the 18th of December last.

With respect to the asphalt which corresponds to the National Government on account of the 3 per cent on the gross product of the mine, the Federal Executive, believing the petition made by you is of justice, has resolved to accede to the petition reducing the price of each ton to the sum of 80 bolivares.

Later, on January 19, 1905, another petition having been presented by the company, the Venezuelan Government issued a decree dated February 7, 1905, ratifying the resolution of October 22, 1904, and reaffirming its attitude in the matter as set out in its decree of January 7, 1905, and replying also to the petition of January 19, 1905, as follows:

* * * Whereas, by reason of your petition referred to, the controversy which has arisen between your company and the Federal Executive as to the grounds of the resolution made by this department on the 21st day of June, 1904, being still open, a controversy which the Government believes to have been disposed of by the communication addressed to you as attorney in fact of the "United States and Venezuela Company"—the Federal Executive deems it useless to continue the discussion on administrative lines, and leaves you at liberty to apply to the courts of justice in Venezuela for the decision of the matter of law which you refer, without prejudice to the company continuing the exploitation and exportation of asphalt as it has been doing up to the present time, until the matter of law be decided, the treasury department continuing its right, until such time, to collect such duties as the company may have become obligated to pay.

The company alleges that these acts of the Venezuelan Government necessitated the stopping of all operations about January 20, 1905, at which time they had on hand some 4,000 tons of asphalt ready for shipment, and that thereafter no operations were undertaken. The company was notified, however, on or about February 13, 1905, that the Venezuelan Government would permit the shipment of the 4,000 tons of asphalt—the question as to taxes to be adjusted later—and that the company took advantage of the offer and shipped the asphalt.

On November 3, 1905, a demand was made on the company by the Venezuelan Government, through its collector of customs at Maracaibo, for the hectare and other taxes due and unpaid as follows: One thousand and seventy-five bolivares, hectare taxes to August 19, 1905; 75,514.70 bolivares, for export and other taxes—or, in all, about $15,000 in gold. These taxes have not been paid by the company.

The history of the relations of the company and the Venezuelan Government from August 19, 1905, until July 20, 1906, may be passed over as comparatively unimportant.

On July 20, 1906, instructions were sent to the agent of the company in Venezuela directing him to prepare 200 tons of crude asphalt for shipment. On August 24, 1906, Mr. Fleming applied to the collector of the port of Maracaibo, Quintero Rajas, a brother-in-law of General Castro, for permission to load asphalt, offering to pay dues as per the present law under protest and referring to the claim of the petitioner to exemption under the Crichfield concession.

On August 25 the collector announced that the company might ship without depositing the amount of duties: that an account of the duties would be kept, and the amounts falling due would be added to the 75,514.70 bolivares above referred to already claimed by the Government—all this to be subject to the final adjustment of the respective claims of the Government and the company.

One hundred and seventy tons of crude asphalt were prepared and shipped September 7, 1906, under the terms of this modus vivendi.

On September 22 and October 6, 1906, the company shipped two consignments of 10,000 sacks each. These shipments of sacks, 20,000 in all, have arrived in Venezuela and are now held in the custom-house pending the payment of the regular import duties. The representative of the company has duly requested that the sacks be admitted free of duty under the Crichfield contract, but this request has been refused.

The company is not able to state at present (December 8) whether or not any action has been taken by the Venezuelan Government or any statement of the position of the Government made beyond the mere refusal to release the bags without the payment of duty.

The company has been expending about $6,000 a month in keeping the property intact and preventing its destruction by the natural results of time and the elements. The petitioner claims to have about reached the end of its funds and to have come to the point where it must either abandon its property and retire from Venezuela, relying upon this Department to prosecute its claim for damages against the Government of Venezuela upon the theory that the latter has absolutely repudiated the contract and given the petitioner the right to rescind and claim damages, or it must borrow money to pay the current expenses of taking care of the works, or it must attempt to run the works and make expenses, in spite of the fact that the company has no means of knowing whether or not it will be permitted to export refined asphalt without the payment of the export tax of 80 cents per ton. The company claims that if this export tax is imposed it will not be worth their while to atempt to run the works.

The Department has refused to advise the company as to the proper course to be followed in the premises. Here the case rests for the present.

The foundation for the acts of the Venezuelan Government in imposing additional taxes and duties in contravention of the company's railroad concession lies in the contention of that Government that the original concession to Crichfield by President Castro is *not valid*, inasmuch as it has not been approved by special act of the Venezuelan Government. The company answers this contention in substance as follows:

1. That at the time said concession was granted and the company accepted and performed its conditions within the time limit, President Castro, although nominally Provisional President, was in fact a military dictator ruling by his decree—no constitution being in existence and the President himself being the sole executive and legislative authority.

2. The first Congress held after General Castro had been named as Provisional President ratified all his acts up to that date, including the grant of the company's concession. This act was passed on February 25, 1902, and was signed by the President and the vice-presidents and secretaries of the Congress. The pertinent part of this resolution reads as follows:

The Congress of the United States of Venezuela. Having examined scrupulously the message which has been sent by Citizen-General Cipriano Castro,

Provisional President of the Republic, giving an account of his labor, political and administrative:

Agrees:

First. To give our approbation to all of the acts executed by the Citizen-General Cipriano Castro during the period in which he has exercised the Provisional Presidency of the Republic.

3. That by the provisions of the constitution adopted after the civil insurrection authority over mines is vested in the executive and not in the legislative branch of the Government.

4. That Venezuela is a republic in name only, under the terms of the constitutional government, and is in fact simply a dictatorship, the judicial and legislative branches of the Government being subject to President Castro's will; and, therefore, if the Congress rejected the company's concession it was only the act of the dictator repudiating his own grant.

The company avers that it conformed to all the obligations imposed by the contract and made everything ready for active operations within the limit of time granted; that relying upon the Congressional approval of the President's acts further outlays were made upon the property, so that by August, 1902, the company was manufacturing and shipping the asphalt in accordance with its concession, and continued its operations (except in 1903 for a short time during the blockade of Great Britain, Germany, and Italy) until about January 20, 1905, when all operations ceased on account of the imposition of the new taxes, as above set out.

With respect to certain resolutions introduced in the Venezuelan Congress, having for their object the passage of a special act approving the concession granted by President Castro, the company denies having had anything to do with such demands and that the said resolutions were introduced and pushed without their knowledge, consent, approval, or interference in any manner. The resolutions referred to were defeated.

In estimating its losses, as based upon expenditures and profits, the company claims that it has expended about $600,000 United States gold in all; that only $5,000 of this sum has been expended on the mine beyond the $25,000 paid for the title, the balance of the $600,000 having been used in building and operating its railroad properties; that by these expenditures the mine and railroad concessions have now a value of at least $1,500,000 United States gold; that the asphalt deposit is practically inexhaustible, the profits therefrom for the year 1904 amounting to $84,119.57, or over 5.5 per cent of the net capitalization of $1,500,000, and that the mine is capable of producing double this amount.

The company sets forth the fact that, under their long-time contracts for the delivery of asphalt, they had to give bonds, and not being able to deliver the asphalt, they are liable for heavy damages upon these bonds.

With reference to any judicial remedy the company might have in the courts of Venezuela, it is asserted that an attempt was made to retain Venezuelan lawyers for the purpose of bringing suit, but said effort was abandoned after the company had failed to secure reputable counsel and had been advised of the uselessness of any attempt to secure its rights through legal processes in Venezuelan courts. The company alleges that it is an impossibility to obtain

justice in these courts, for the reason that the courts have no power to compel the Executive to carry their decrees into effect.

The Department has been furnished printed memorials setting forth in detail the foregoing facts. In its summary of the entire case the company's petition says:

That by reason of said facts the company's concession has been revoked, rescinded, and annulled, and has been made valueless by the actions of the Venezuelan Government in the premises, and the rights, titles and interests, privileges, franchises, and immunities granted to the Company by said concession of April 20, 1901, have been destroyed. That thereby the title of the company to the said railroad and refining plant and works, and in and to the lands occupied by the same, and the easements appurtenant thereto have been annulled, destroyed, and confiscated, for said railroad and mining plant have been built pursuant to the said concession upon public lands, and if, as claimed by the Venezuelan Government, the said concession to the company of April 20, 1901, is invalid, then the company had no legal right or authority to construct or operate said railroad, refining works, or plant upon said public lands, and by the law of accretion the company would have no title thereto as constructed, and the title to the same would be in the Venezuelan Government, and by reason thereof the company stands in imminent danger of losing the large sums of money which the company has invested in said railroad and plant, and of losing the entire value of said enterprise. The company has duly performed all and singular the covenants and conditions on its part to be performed under said concession of April 20, 1901, and stands ready and willing to continue in the performance of the same, and is anxious to continue its operations thereunder, but by reason of the action of the Venezuelan Government in the premises, the company has been unable to continue operations under the said concession and to carry on its business thereunder, and has been compelled to desist from all business thereunder and to shut up and close its refinery, plant, and railroad, and the company has thereby suffered great loss and damage amounting to over $2,000,000 in American gold.

On these facts the company prays this Government to bring the matter to the attention of the Venezuelan Government, and requests that the Government of Venezuela may be called upon to live up to and perform all the covenants and conditions on its part to be performed under the said concession bearing date the 20th day of April, 1901, and to pay to the company the damages resulting from the compulsory shut down of the company's business since January 1, 1905, and the expenses of reopening the plant, and all damages in the deterioration of the property, and for loss of profits during the year, and for its liability to subcontractors, or in case such relief is impracticable, then the company be granted by reason of said breaches of said concession by the Venezuelan Government, the relief of a rescission of the concession and the abandonment of the same and of the mine to the Venezuelan Government, and the payment by the Venezuelan Government to the company of all damages thence arising and the costs and expenses in connection therewith, amounting to the sum of $2,000,000 in American gold.

It is also suggested in the petition that the Department direct the American minister at Caracas to bring the matter to the attention of the Venezuelan Government and to especially ask that Government whether the claims of the petitioning company are disputed or not; and if so, to propose an arbitration of the questions. The company expresses its desire that in case an arbitration is provided for The Hague Tribunal be selected for the purpose.

THE CONCESSION VALID AND SUBSISTING.

From the foregoing statement of facts it is apparent that the claim of the United States and Venezuela Company against Venezuela, commonly known as the Crichfield claim, is based upon the breach of a concession.

The Venezuelan Government treats the concession as if it had never received the sanction of the Legislature and as subject to Executive action and discretion. This contention is, however, contrary to fact. The concession bears date the 20th day of April, 1901. It provided that the contractor should begin work within six months and finish the work within one year after having commenced the same. The company was, therefore, obligated to begin work by the 20th day of October, 1901, and to complete it by October 20, 1902. In order to complete the work within the prescribed time the company was compelled to expend large sums of money before any Congress was in session before which the concession might be submitted for approval. At the first Congress held in Venezuela after the making of the contract the Congress passed the following resolution on the 25th day of February, 1902:

The Congress of the United States of Venezuela. Having examined scrupulously the message which has been sent by Citizen-General Cipriano Castro, Provisional President of the Republic, giving an account of his labor, political and administrative:

Agrees:

First. To give our approbation to all of the acts executed by the Citizen-General Cipriano Castro during the period in which he has exercised the Provisional Presidency of the Republic.

The Congress would, therefore, seem to have approved the compact with the claimant company in exactly the same way in which it approved all the other acts performed by General Castro as military dictator; and the present claim of the Government that the approval was invalid because not read three times, etc., would seem to be too flimsy to be worthy of notice. Moreover, the contention of the company would seem to be correct—that General Castro was a military dictator at the time the concession was granted; that he possessed and exercised all the powers of government; and that his acts were therefore binding upon the so-called constitutional government which succeeded him, just as the acts of a de facto government are binding upon the restored or legitimate government.

The fact that on two separate occasions an attempt was made without the authority or the knowledge of the owners of the Crichfield concession to pass an act specially validating the claim can have no importance in the consideration of the case, for if validly ratified the concession existed, and subsequent ratification would be unnecessary, if not useless, in point of law. Its effect would be moral rather than legal.

Moreover, the fact that the Government has permitted and encouraged the company to go ahead and expend large sums of money both before and after the ratification by Congress of February 25, 1902, would seem to raise an equitable estoppel against any question as to the technical legality of the Congressional approval. (Michigan *v.* Flint and Pere Marquette Railroad Company, 1891, 89 Mich., p. 481.)

These considerations render unnecessary an examination of the further claims of the company, namely, that by the provisions of the constitution adopted after the civil war and pursuant to the constitution just preceding the same, authority over mines is vested in the executive and not in the legislative branch of the Government; that Venezuela in fact is a republic in name only, and that the action

of Congress merely records the will of the Executive, and that the failure to ratify on the part of Congress merely indicates a repudiation of the concession on the part of the Executive which granted it.

If the concession was properly granted by the Executive, and if the concession so granted by the Executive was sanctioned by the Legislature, it follows that such concession is valid and binding alike upon Venezuela and Crichfield until set aside in an appropriate legal proceeding; for it has been held alike by courts of last resort in Venezuela and by courts of international arbitration that the Executive alone may not invalidate a concession conferred and ratified by the Congress of Venezuela. In the decision of the Venezuela Federal court of cassation, under date of March 1, 1906, it is said:

> The allegation that in distinct epochs, and for analogous reasons of inexecution, the insubsistence of contracts of national interest has been administratively declared, is of no efficacy; because as is established by Article V of the Civil Code of 1881, reproduced in later codes, laws cannot be repealed (derogadas) except by other laws, and it is of no use to allege disuse or custom, or practice to the contrary, no matter how ancient and universal they may be, against their observance, under which principle the high Federal court rendered its decision of January 4, 1889, and of June 6, 1898, in the respective suits arising by the executive resolutions of August 3, 1887, and January 4, 1898.

And in the cases of George Turnbull, The Manoa Company (Limited), and The Orinoco Company (Limited) *v.* Venezuela it was held squarely that a concession otherwise valid could not be set aside by Executive action. (Ralston's Rept., p. 200 et seq.) The concession is, therefore, to use a technical expression, valid and subsisting.

BREACH OF THE CONCESSION.

The breach of the terms of the concession on the part of the Government of Venezuela is as clear as the validity of the contract is unquestionable.

The concession expressly provided (article 12) that—

> neither this enterprise nor the products of its mines can be burdened with any kind of national taxes or contributions, except stamp fees levied by the department of public instruction and the dues prescribed by the now existing law relating to mines.

Fortunately, the terms of the article are clear, and no question seems to arise as to its construction. It means that the properties of the company and the products of its mine shall be exempt from all taxes of every description except, first, stamp fees levied by the department of public instruction; second, taxes prescribed by the then existing laws of Venezuela.

As appears from the statement of facts already made, the Government of Venezuela by legislative and executive action has asserted the right to assess and collect various new and burdensome taxes other than those prescribed by the law existing at the time the concession was granted. It is not suggested that these taxes are stamp taxes levied by the department of public instruction or that they are not different both in degree and in kind from the taxes due under the law as it existed at the time the concession was granted. In fact, it is not contended apparently by the Venezuelan Government that these taxes are justified by the terms of the contract. On the contrary, the Government asserts the right to levy these taxes because it denies the validity of the contract.

The Venezuelan Government treats the concession as if it had never received the sanction of the Legislature and as subject to Executive action and discretion. This contention is, however, contrary to fact. The concession bears date the 20th day of April, 1901. It provided that the contractor should begin work within six months and finish the work within one year after having commenced the same. The company was, therefore, obligated to begin work by the 20th day of October, 1901, and to complete it by October 20, 1902. In order to complete the work within the prescribed time the company was compelled to expend large sums of money before any Congress was in session before which the concession might be submitted for approval. At the first Congress held in Venezuela after the making of the contract the Congress passed the following resolution on the 25th day of February, 1902:

The Congress of the United States of Venezuela. Having examined scrupulously the message which has been sent by Citizen-General Cipriano Castro, Provisional President of the Republic, giving an account of his labor, political and administrative:

Agrees:

First. To give our approbation to all of the acts executed by the Citizen-General Cipriano Castro during the period in which he has exercised the Provisional Presidency of the Republic.

The Congress would, therefore, seem to have approved the compact with the claimant company in exactly the same way in which it approved all the other acts performed by General Castro as military dictator; and the present claim of the Government that the approval was invalid because not read three times, etc., would seem to be too flimsy to be worthy of notice. Moreover, the contention of the company would seem to be correct—that General Castro was a military dictator at the time the concession was granted; that he possessed and exercised all the powers of government; and that his acts were therefore binding upon the so-called constitutional government which succeeded him, just as the acts of a de facto government are binding upon the restored or legitimate government.

The fact that on two separate occasions an attempt was made without the authority or the knowledge of the owners of the Crichfield concession to pass an act specially validating the claim can have no importance in the consideration of the case, for if validly ratified the concession existed, and subsequent ratification would be unnecessary, if not useless, in point of law. Its effect would be moral rather than legal.

Moreover, the fact that the Government has permitted and encouraged the company to go ahead and expend large sums of money both before and after the ratification by Congress of February 25, 1902, would seem to raise an equitable estoppel against any question as to the technical legality of the Congressional approval. (Michigan *v.* Flint and Pere Marquette Railroad Company, 1891, 89 Mich., p. 481.)

These considerations render unnecessary an examination of the further claims of the company, namely, that by the provisions of the constitution adopted after the civil war and pursuant to the constitution just preceding the same, authority over mines is vested in the executive and not in the legislative branch of the Government; that Venezuela in fact is a republic in name only, and that the action

The doubtful and perplexing questions which so frequently arise in regard to the construction of a contract to exempt from taxation do not arise in this case. It is admitted on all sides that the present Venezuelan law imposes taxes upon the company in contravention of the company's concession.

Neither is it necessary to discuss the question as to whether or not public policy should permit a state or nation to bargain away its taxing power. In spite of vigorous opinions to the contrary, expressed in numerous dissenting opinions, it is well established in the United States that such a contract as we have in this case, providing for exemption from taxation and limiting the amount thereof, is valid when entered into by one of the States of our Union, and relief will be given in the Federal courts against the imposition of taxes in violation of such a contract. Presumably this is also in accordance with the views of public policy which obtain in Venezuela, for it has nowhere been suggested by the Venezuelan Government that the terms of the Crichfield concession guaranteeing exemption from taxation to the company were void as against public policy. As has been said before, the position of the Venezuelan Government is not that the contract permits taxation or that the clauses in the contract forbidding taxation are void as against public policy, but that the entire concession is void because not ratified by the legislative department of the Government. We are relieved, therefore, of any further discussion of these points.

We have, then, a clear case of a valid and subsisting contract and a breach of that contract on the part of the Government of Venezuela. Again, we have a case in which the breach of the contract on the part of the Venezuelan Government is of such a nature as to justify the company in abandoning its works to the Government and seeking its remedy by way of rescission and damages.

If it be said that the article forbidding the taxation of the company by the Government was but one of the articles of the concession and that the taxes imposed by the Government, even though they be in violation of the contract, do not justify rescission, the answer is threefold.

In the first place, it is confidently maintained by the company that the mine can not be worked at a profit if the taxes imposed upon the company be paid, and that the taxes are in fact so heavy as to amount to a substantial destruction of the value of the franchise, and therefore a justification for rescission. While the petitioner has adduced no evidence before the Department to substantiate this position, the fact that the petitioner is willing to abandon an enterprise in which it has invested over $600,000, and which at the time of the imposition of the taxes showed a profit of about 5 per cent upon a capitalization of $1,500,000, is persuasive evidence that this contention is correct.

In the second place, it is hardly necessary to recur to Chief Justice Marshall's famous holding that the right to tax necessarily involves the right to destroy. (McCulloch *v.* Maryland, 1819, 4 Wheat., 316, 431.) Even if it be true that the taxes at present levied against the company could be paid and the business still continued at a profit, there is no reason to believe that other legislative enactments and other Executive decrees would not raise the tax to a point where ruin and bankruptcy would overwhelm the company. Once admit the

right to tax beyond the amount specifically provided for in the concession, and there is no limit to the amount of the taxation. If taxation rests in the discretion of the Executive or the Legislature of Venezuela, it may only cease with the destruction and confiscation of the entire subject-matter. If it be true in any country that the right to tax is in legal theory the right to destroy, it is especially true in Venezuela, and the petitioning company alleges that it was in view of the peculiar conditions existing in Venezuela that article 12 of the concession was drawn, and that the article as at present worded was conceded with the greatest reluctance on the part of Venezuela and only after the concessionnaire had refused to invest his money in the concession without an absolute guaranty against a higher rate of taxation than that provided for under the then existing laws of the country.

Moreover, it is to be noted that the same line of argument which would justify Venezuela in imposing the increased hectare tax or exploitation tax and the export and import duties would also justify Venezuela in proceeding to the collection of the tax of 25 per cent upon the net proceeds of the mine as provided for in the Executive decree of June 21, 1904 (supra, p. 121). Although no actual attempt has been made to enforce this provision against the company, its enforcement would seem to be the natural and probable consequence of the payment of the other taxes on the part of the company.

But, finally, it would seem to be a conclusive argument against any suggestion that the breach on the part of the Government of Venezuela does not go to the essence of the contract that, as has before been stated, the Government of Venezuela defends the taxes levied under the new legislation and decrees, not upon the ground that these taxes are permitted by the contract, not upon the ground that article 12 and the other articles of the contract in regard to taxes are invalid as against public policy, but upon the ground that the contract does not in fact have any valid existence because it was not ratified by the legislative authority.

It would therefore seem clear that whether the breach on the part of Venezuela be viewed in the light of practical conditions, in the light of legal theory, or in the light of the grounds assigned by Venezuela herself, it amounts to an express and complete repudiation of the concession and justifies the concessionnaire in rescinding the contract and electing damages.

A CONTRACT CLAIM.

It is objected that the claim of the concessionnaire is one arising solely by reason of a violation of the terms of the concession on the part of the Government of Venezuela, this violation not consisting in or being accompanied by the seizure of any property belonging to the concessionnaire; in other words, that the claim in the present case arises entirely from a breach of contract not associated with any tortious act—that it is a pure contract claim. And it is objected that according to the principles of international law and the enlightened practice of civilized nations such a claim furnishes no ground for international reclamations.

It is admitted that there is a very considerable body of practice which lends more or less support to this view and renders it neces-

sary to examine the question briefly from the standpoint of principle as well as practice.

ON PRINCIPLE.

It is believed that in the abstract there is no particular reason why a nation should intervene in order to protect its citizens who have suffered tortious injury at the hands of a foreign nation and refuse to take similar steps in behalf of its citizens who have suffered from the repudiation of contractual obligations. In each case the loss is a property loss, and the consequences in one case are, it would seem, just as apt to be disastrous as in the other. It can hardly be said, as is sometimes suggested, that in one case the loss is forced upon the citizen in spite of everything which he can do to prevent it, whereas in the other he voluntarily enters into contractual relations with the foreign nation or its citizens; for there would not seem to be much difference, so far as the maxim volanti non fit injuria is concerned, between the citizen of State A who goes into State B, enters into contracts with the state or its citizens, acquires property as a result of these contracts, and then is tortiously deprived of his property, and the citizen who is so unfortunate as to suffer from the breach of the contract whereby he hoped to acquire property. Each has voluntarily gone within the jurisdiction of a foreign state and acquired property rights there. The precise method by which they have been deprived of these rights, so long as it be illegal, would not seem to be material as a matter of principle. And to this effect is the opinion of the late W. E. Hall:

> Fundamentally, however, there is no difference in principle between wrongs inflicted by breach of a monetary agreement and other wrongs for which the state, as itself the wrongdoer, is immediately responsible. The difference which is made in practice is in no sense obligatory; and it is open to governments to consider each case by itself and to act as seems well to them on its merits. (International Law, 5th ed., p. 281.)

(See also Martens; Droit des Gens, 299, liv. 3, ch. 3; Phillimore, vol. 2, p. 8. See also opinion of Findlay, Commissioner, for the Commision, in the case of Melville E. Day and David E. Garrison, as surviving executors of Cornelius K. Garrison, *v.* Venezuela, No. 38, United States and Venezuelan Claims Commission, Convention of December 5, 1885, Moore's International Arbitrations, vol. 4, p. 3554.)

The attitude of the English Government has been in harmony with the view of the law expressed in the above quotation from Hall. The English policy and the reasons upon which it is founded were laid down in 1848 by Lord Palmerston in a circular addressed to the British representatives in foreign states. (See Hall, 5th ed., note 281–282.) In this circular Lord Palmerston asserts the right to intervene for the protection of contract claims, especially for the protection of British subjects who are holders of the financial obligations of foreign governments, but states that as a matter of policy, and in order to discourage British subjects from such questionable investments and induce them to invest their capital at home in productive industries, the Government had ordinarily declined to intervene for their protection. (See also instructions of Lord John Russell to Sir C. Wyke, March 30, 1861, British State Papers, 1861, 238,

in which he reasserts the right of the Government to intervene in such cases. This doctrine was more lately reaffirmed by Lord Salisbury. See the Times of January 7, 1880; Hall, note, 5th ed., p. 283.)

THE PRACTICE OF THE UNITED STATES.

On the other hand, the general practice of the United States has been not to intervene in such cases, except unofficially by way of good offices. The broad and general terms, however, in which this policy has been announced may seem, by inference, at least, to deny the right as well as to question the expediency of such intervention. (See opinion of Findlay, Commissioner, supra, Moore's International Arbitrations, vol. 4, p. 3555. See Moore's International Law Digest, sec. 995, headed "Contract claims not as a rule officially presented." See especially Mr. John Quincy Adams, Secretary of State, to Mr. Salmon, April 29, 1823, Moore's International Law Digest, vol. 6, p. 708; Mr. Bayard, Secretary of State, to Mr. Bispham, June 25, 1885, Moore's International Law Digest, vol. 6, p. 716.)

There are not wanting, however, expressions on the part of the Department of State which would seem to take a different view of the matter, and to place the refusal of our Government to intervene in such cases upon grounds of expediency rather than to explain it as based upon settled principles of international law. (See Mr. Madison, Secretary of State, to Mr. Livingston, minister to France, October 27, 1803, Moore's International Law Digest, vol. 6, p. 707.) It must be admitted, however, that whether the course of this Government is the result of settled convictions regarding the legal question involved or referable rather to temporary considerations of policy, the Department of State has maintained with reasonable consistency that there is a solid and substantial distinction between intervention in behalf of citizens whose claims result from breach of contract and those whose claims sound in tort.

The following extract from a letter dated the 11th of November, 1847, addressed by the Department to Vice-President Dallas, in answer to an application made by him in behalf of an American citizen, which letter was carefully considered and adopted by the President and his entire Cabinet, and which was subsequently incorporated into an instruction by Mr. Buchanan when Secretary of State, may be said fairly to represent the general attitude of this Government:

> It has been the practice of this Department to confine its official action in the recovery of indemnity from foreign Governments to tortious acts committed under their authority against the persons and property of our citizens. In the case of violation of contract the rule has been not to interfere, unless under very peculiar circumstances, and then only to instruct our diplomatic agents abroad to use their good offices in behalf of American citizens with the Governments to which they are accredited. The distinction between claims arising from torts and from contracts is, I believe, recognized by all nations, and the reasons for this distinction will readily occur to your own mind.

The adherence of the Department to this view has not, however, been universal and without exception. Repeatedly, in negotiating agreements for an international commission to pass upon claims held by United States citizens against foreign Governments, and vice versa, language has been used sufficiently broad to cover claims aris-

ing out of contract as well as claims arising out of tort, and this language has been construed by the commissions in this liberal sense.

International commissions have frequently allowed claims based on the infraction of rights derived from contracts where the denial of justice was properly established. This was done under the convention between the United States and Mexico of April 11, 1839; by the commission under the act of Congress of March 3, 1849, to carry into effect the Treaty of Guadalupe Hidalgo; by the commission under the treaty between the United States and Great Britain of February 8, 1853: by the commission under the convention between the United States and Peru of January 12, 1863; by the commission under the convention between the United States and Mexico of July 4, 1868; and by the commission under the convention between the United States and Venezuela of December 5, 1885. (Moore's International Law Digest, vol. 6, p. 718.)

A typical example of the language under which these rulings have been made is the United States and Venezuelan Claims Commission Convention of December 5, 1885, which provided for the settlement of "all claims on the part of corporations, companies, or individuals, citizens of the United States, against the Government of Venezuela, which may have been presented to their Government, or to its legation at Caracas, before the 1st day of August, 1868." This language was held to be broad enough to include contract claims. (See also the interesting early case of the commission for the settlement of claims between the United States and Spain, arising out of the treaty of February 22, 1819, Moore's International Law Digest, vol. 6, p. 717. See opinion of Mr. Adams, Secretary of State, in his letter of March 9, 1822, as to the meaning of the term "claims" as used in that treaty, Moore's International Arbitrations, vol. 4, p. 3630.)

It therefore appears that notwithstanding its general policy of nonintervention in cases of contract claims, the Department of State has repeatedly negotiated special conventions with other governments providing for the submission of such claims to arbitration. These cases are treated by Mr. Moore in his International Law Digest in section 996, entitled "Exception where diplomacy is the only method of redress." It would seem, however, that although it may well be true that after such a convention is negotiated it furnishes the only recourse of an American citizen who holds contractual claims against the government in question, the claimant was in as good a position as any other contract claimant. These cases would seem to hold that when it seems convenient and expedient to arrange for the settlement of contractual claims by a diplomatic arrangement this Government does not hesitate to take this course.

Again, it is suggested by Mr. Moore, in his section 997, entitled "Confiscatory breaches of contract," that an exception to the general policy of nonintervention in contract claims seems to arise in cases in which the breach of contract also amounts to a tort and a confiscation of tangible property. This suggestion is of very considerable value in explaining and classifying the instances of intervention in contract cases. This intervention, naturally, is most likely to occur in flagrant cases (Thornton, umpire, in Treadwell's Case, Moore's International Arbitrations, p. 3469), and the cases in which the breach of contract amounts to a tort and a confiscation of property are naturally apt to be the most flagrant. This section by Mr. Moore contains numerous illustrations of tortious breaches of contract, so to speak, and many more cases are found in Chapter LXIII in his International Arbitrations, entitled "Contract claims."

It is believed, however, that a number of the cases discussed by Mr. Moore in this latter section are cases of simple breach of contract in which, so far as the record shows, there was no tortious element. (See Venezuelan Bond Cases, 4 Moore's International Arbitrations, pp. 3616–3631, 3651.) A number of these cases appear to be cases growing out of a simple breach of contract, nonpayment for supplies furnished, or services rendered. (The Idler Case, etc. See the Hermon Case, 4 Moore's International Arbitrations, p. 3425, supplies to a war vessel; the Hunter Case, 4 Moore's International Arbitrations, p. 3426, war supplies; Eckford's Case, 4 Moore's International Arbitrations, p. 3429; Parrott's Case, 4 Moore's International Arbitrations, p. 3429; Meade's Case, 4 Moore's International Arbitrations, p. 3430; Underhill's Case, 4 Moore's International Arbitrations, p. 3433; Ulrick's Case, 4 Moore's International Arbitrations, p. 3434; Eldredge's Case, 4 Moore's International Arbitrations, p. 3460; Manasse & Company's Case, 4 Moore's International Arbitrations, p. 3462; Iturria's Case, 4 Moore's International Arbitrations, p. 3464; Steelman's Case, 4 Moore's International Arbitrations, p. 3465; Walter's Case, 4 Moore's International Arbitrations, p. 3567; Trumbull's Case, 4 Moore's International Arbitrations, p. 3569; or for expenses incurred on the faith of the agreement of the defendant Government, Union Loan Company's Case, 4 Moore's International Arbitrations, p. 3434.)

Among historic instances of intervention on the part of other countries in behalf of contract claims may be mentioned the intervention of France and England in Mexico for the protection of Mexican bondholders, and the recent intervention of Germany, England, and Italy by bombardment and blockade in Venezuela on behalf as well of claimants holding contractual claims as those claiming on account of torts.

CONTRACTS WITH FOREIGN GOVERNMENTS.

It will be noted that almost all of the cases above noted in which recovery has been allowed before an international tribunal upon a contract claim in accordance with the terms of the convention setting up the commission have been cases of contract claims not against individuals, but against governments, and it is easy to see that while adhering in general to the policy of nonintervention in cases of contract claims, special reasons exist for such interference in case of the claims of an American citizen against a foreign government, especially if that government be one which exercises arbitrary powers. This distinction was pointed out by Secretary Cass, when he said:

> When citizens of the United States go to a foreign country, they go with an implied understanding that they are to obey its laws and submit themselves in good faith to its established tribunals. When they do business with its citizens or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or these contracts, or would undertake to determine any dispute to which they give rise. * * *
>
> *The case is different when the foreign government becomes itself a party to important contracts*, and then not only fails to fulfill them but capriciously annuls them to the great loss of those who have invested their time, labor, and capital in their reliance upon its good faith and justice. (2 Wharton's Digest of International Law, sec. 230, p. 615; Mr. Cass, Secretary of State, to Mr. Dimitry, May 3, 1860, MSS. Inst. Am. State.)

(See also the opinion of the majority of the tribunal in the El Triunfo Case; Hall, International Law, 5th ed., p. 279.)

ARBITRARY GOVERNMENTS.

No principle of international law is more fundamental or better established than the absolute equality of states or international persons. Russia and Geneva are equal. It must be admitted, however, that as a matter of fact nations are no more equal in their ideals and standards of justice than are individuals, and that an exception which suggests intervention in case of contract claims in case of flagrant injustice may easily come in practice to mean a tendency toward intervention in the case of nations whose arbitrary methods and imperfect standards of justice give, in fact, the most frequent occasion for such intervention. This proposition again is clearly and emphatically stated by Secretary Cass in his instruction to Mr. Lamar, minister to Central America, No. 9, July 25, 1858, when he said:

> In countries where well-defined and established laws are in operation, and where their administration is committed to able and independent judges, cases will rarely occur where such intervention will be necessary. But these elements of confidence and security are not everywhere found, and where that is unfortunately the case the United States are called upon to be more vigilant in watching over their citizens, and to interpose efficiently for their protection when they are subjected to tortious proceedings by the direct action of the government or by its indisposition or inability to discharge its duties.
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> * * * * * * * * * * What the United States demand is that in all cases where their citizens have entered into contracts with the proper Nicaraguan authorities, and questions have arisen, or shall arise, respecting the fidelity of their execution, no declaration of forfeiture, either past or to come, shall possess any binding force unless pronounced in conformity with the provisions of the contract, if there are any, or if there is no provision for that purpose, then unless there has been a fair and impartial investigation in such a manner as to satisfy the United States that the proceeding has been just and that the decision ought to be submitted to. Without some security of this kind, this Government will consider itself warranted, whenever a proper case arises, in interposing such means as it may think justifiable, in behalf of its citizens who may have been or who may be injured by such unjust assumption of power. (Moore's International Law Digest, vol. 6, pp. 723, 724.)

In this connection it should be noted, however, that in a case which very closely resembles the one under discussion, the case of the Champerico and Northern Transportation Company of Guatemala, the ordinary rule was applied. In that case the Guatemalan Government entered into a contract with certain citizens of the United States for the building of a railway from Champerico, on the Pacific coast, to a town in the interior. By this contract the Government agreed to grant a subvention of $700,000 in bonds, payable at the Champerico custom-house, for 25 per cent of the duties there collected, as well as not to make any concession for a competing line of railway within a certain distance for the term of twenty-five years. Subsequently, the Guatemalan Government violated two essential features of the contract—the agreement to receive the bonds at the custom-house and the guaranty against competing roads within 15 leagues—and for these breaches of contract the petitioner asked redress. Secretary Bayard followed the usual rule and instructed the American minister merely to use his unofficial good offices. (Moore's International Law Digest, vol. 6, p. 726.)

There is, however, good authority for the proposition that the general practice of nonintervention by this Government in contract claims is subject to exceptions in cases of flagrant injustice; that such cases are apt to exist where the breach of contract in question amounts also to a tortious act, where the contract is made directly with some foreign government rather than with a private individual, and where the government in question is one of those governments which long experience has shown has not as yet developed ideals and standards of justice equal to the average standards of the civilized world.

THE ANALOGY BETWEEN PUBLIC AND PRIVATE LAW AS REGARDS THE ENFORCEMENT OF CONTRACTS.

It may not be inappropriate at this point to suggest the analogy between public and private law as regards the enforcement of contracts.

In the history of municipal law we find that the punishment of crime preceded the enforcement of civil rights. First came the punishment of crime; then came the recognition of the tort and the vindication of the civil rights which are violated by torts. At first torts were regarded as quasi crimes giving remedies to individuals, later on as torts proper, and last of all came the conception of contract.

The law of contracts forms so large a part of our present municipal law that it is hard to realize that at one time society, and even law, existed without any substantial recognition of the right to contract. Yet this seems to have been the fact. Within historic time contract has slowly and painfully developed with the growth of confidence among men. This seems to have been the way of legal development not only in our law but so far as is known in the law of all civilized countries. (See Maine's Ancient Law, ch. 9; Pollock and Maitland's History of Early English Law; Holmes's Lectures on the Common Law.)

Contracts evidenced by the seal of the party charged, or by other formal solemnity, were among the first to be recognized and enforced. Again, the executed contract of sale, where the property was delivered and the money paid, seems to be among the first contracts that the law of Rome or of England took upon itself to protect. Then the courts began to enforce a half-executed sale, especially if the vendor proved a delivery and a promise; the burden was upon the vendee to show payment. And in England, after a long and interesting struggle, lasting from the time of Henry IV to the time of Henry VII, the courts concluded to enforce mutual oral promises without other consideration and unexecuted—the consensual contracts of the civil law. The old yearbooks are full of the history of this struggle and show the slow degrees by which our modern law of contract emerged from a state of civilization which demanded the obvious wrong of a forcible tort before the wheels of justice were set in motion.

If the general analogy between man and the race, between public and private law, obtains in the case of the development of the right of contract and the remedy for its breach, we should expect to find public law following the lines of development of municipal law in this as in other respects, and such in fact is the history of public law

on this point. The recognition of the right of a nation to intervene in behalf of one of its citizens within the territorial limits of another has followed the order which we found in the history of private law. First, the right has been recognized in cases of crime against the person; second, in the case of torts against the person or property; and third, in the case of breaches of contract resulting in gross injustice, especially if these breaches have been of a confiscatory nature amounting in fact to a tortious seizure of property. It seems, therefore, not unreasonable to suppose that the future development of international law, as its past development, in regard to the enforcement of contractual rights, will be along the lines of private law, and that inasmuch as there seems to be no difference in principle between the enforcement of a right growing out of a contract and a right growing out of a tort, and since in the history of private law the enforcement of a right growing out of a tort has come first, to be followed by the enforcement of contractual obligations, such should also be the course of public law, and that the public law in the future, as the municipal law of the present, may properly enforce without distinction rights arising out of the breach of contract and rights growing out of the tortious seizure of property.

Moreover, it should be noted that the gradual but sure substitution of arbitration—that is, of a judicial method for the settlement of disputes—for war is removing any possible objections which may exist to the enforcement of contractual obligations arising out of considerations of expediency and public policy. It has been suggested that the policy of the United States in regard to this subject has, in fact, been dictated by practical considerations, especially by the fact that in the times of its adoption the United States Navy was a negligible quantity. Certain it is that our policy has been defended on the ground that war was not a proper method for the collection of debts. If, however, as seems certain, war is ultimately to be replaced by a system for the administration of justice between nations, at least as far as relates to all such minor questions as contract claims, there would seem to be no reason for making a distinction between claims arising out of contract and claims arising out of tort.

It is not contended that such is the law at present, but it is suggested that if the history of the development of the law shows that such is the tendency of the law, it furnishes a legitimate argument for a liberal construction of the law as it stands to-day in favor of that tendency. For it is surely proper, in so far as we may do so in harmony with principle and in furtherance of justice and equity, consciously to promote the symmetrical development of the law rather than to leave that development to the slow but sure agencies of time and convenience.

NO RESORT TO THE COURTS.

There is no principle of international law better settled than that which requires a claimant, in general, to exhaust the judicial remedies afforded by the local courts before he has any standing as an applicant for diplomatic intervention or before an international tribunal. The claim in the present case rests upon a contract, and if the contract is ambiguous or needs interpretation the court is open

to Crichfield and his associates. Indeed, the claimant was informed that the question was a judicial one, and the company was referred to the court. Replying to a petition from the company of January 19, 1905, the Venezuelan Government said:

> * * * Whereas by reason of your petition referred to, the controversy which has arisen between your company and the Federal Exucutive as to the grounds of the resolution made by this Department on the 21st day of June, 1904, being still open, a controversy which the Government believes to have been disposed of by the communication addressed to you as attorney in fact of the "United States and Venezuela Company"—the Federal Executive deems it useless to continue the discussion on administrative lines, and leaves you at liberty to apply to the courts of justice in Venezuela for the decision of the matter of law to which you refer, without prejudice to the company continuing the exploitation and exportation of asphalt as it has been doing up to the present time, until the matter of law be decided, the Treasury Department reserving its right until such time, to collect such duties as the Company may have become obligated to pay.

Nevertheless, the claimant company, acting on the advice of its attorneys that legal proceedings under the circumstances would be perfectly useless, has made no attempt to assert its rights in the Venezuelan courts. There is, however, a well-defined exception to the general rule requiring a claimant to exhaust judicial remedies as a preliminary to seeking diplomatic relief. As Lord Palmerston remarked in the House of Commons:

> But there may be cases in which no confidence can be placed in the tribunals, those tribunals being, from their composition and nature, not of a character to inspire any hope of obtaining justice from them. It has been said: "We do not apply this rule to countries whose governments are arbitrary or despotic, because there the tribunals are under the control of the government, and justice can not be had; and, moreover, it is not meant to be applied to nominally constitutional governments, where the tribunals are corrupt."

The same idea was expressed by Mr. Fish in his instruction to Minister Foster, No. 54, December 16, 1876, when he said:

> In cases of a denial of justice the right of intervention through diplomatic channel is allowed, and justice may as much be denied when, as in this case, it would be absurd to attempt to seek it by judicial process, as if it were denied after having been so sought. (Moore's International Law Digest, vol. 6, p. 678.)

Perhaps, however, the idea has never been more briefly or more clearly expressed than by Secretary Fish when he said:

> A claimant in a foreign state is not required to exhaust justice in such state when there is no justice to exhaust.

It should be remembered that this statement was made in regard to Venezuela. (Mr. Fish to Mr. Pile, minister to Venezuela, May 29, 1873, Moore's International Law Digest, vol. 6, p. 677.)

It is an unfortunate fact that the courts of Venezuela do not seem to be the handmaids of justice, but rather the instruments of its prostitution. The doctrine of stare decisis seems to be unknown in their jurisprudence. A precedent may be found—it does not need to be; and judges who hold their tenure at the mercy of a military chieftain are wont to lick the hand that feeds them. An invitation to litigate under these circumstances is little less than an invitation to bankruptcy. For a concrete illustration of the truth of this statement reference may be had to the Idler Case (4 Moore's International Arbitrations, pp. 3491–3501), in which the Venezuelan Government refused to obey the mandate of the court, reconstructed the court, and secured a new judgment reversing the former judgment against the

Government. In more recent times the New York and Bermudez Company has repeatedly sought relief and redress in Venezuelan courts, with the result that after years of litigation the company stands despoiled of its property while its business rivals, under the auspices of the Venezuelan Government, are exploiting the property to which it has unquestioned title and competing with and underselling it in the American market by selling its own goods manufactured at its own factory.

Merely calling a court "a court" does not make it so, and if the courts of Venezuela do not administer justice in an appropriate case, a resort to them is an act of folly, a luxury beyond the reach of the man of affairs. A court necessarily implies judgment according to law, which presupposes, in turn, that the law ascertained shall be administered; that the claimant should have an opportunity of presenting his case, and having the case, when presented, decided upon the evidence introduced; and, finally, the decree, when delivered, must be binding alike upon the Government and private suitor. These requirements are elementary. The lack of them negatives the existence of a court in the sense in which that term is ordinarily used. A resort to a court and a denial of justice in a judicial proceeding can not be a prerequisite to diplomatic action, if the essentials are lacking to such a degree that the resort must of necessity be nugatory.

THE CALVO CLAUSE.

To preclude the claimant in this case from relief, the Calvo clause—"All the doubts and controversies arising from the interpretation and wording of this contract shall be decided by the courts of the Republic of Venezuela in accordance with its laws, and in no case can they become the foundation for international claims"—is triumphantly invoked. It is true that the claimant company itself waived all rights of diplomatic intervention as far as it was concerned, but an unaccredited agent may not renounce the right or privilege of the Government, and for the purposes of this claim, and the company is nothing more than a private citizen. A citizen may waive or renounce any private right or claim he possesses; he may not renounce the right or privilege of this Government. It is not merely the right and privilege, it is the duty, of the Government to protect its citizens abroad and to see to it that the dignity of this Government does not suffer injury through violence or indignity to the private citizen. Take the case of an act which may at once be a tort and a crime: It is a familiar doctrine that the injured party may waive the tort; he can not waive the crime. The reason is that he may waive a right or privilege which he possesses in his private capacity; he can not waive the right of the public nor the interest of the public, because he is not the agent of the public for such purposes. It therefore follows that this Government may intervene with entire propriety to protect the rights of its citizens, even although such citizens have contracted away the right to diplomatic intervention in so far as it lay in their province.

THE LAW AS APPLIED TO THE FACTS IN THE PRESENT CASE.

As has been already stated, the present case is a case of a contract claim in which the tortious element is lacking. At one time

the Venezuelan Government seized certain asphalt belonging to the company, but this has been released pending a settlement between the Government and the company. At other times certain bags and other supplies imported by the company have been detained in the custom-house on account of a claim for duties which the company disputes, but these also have been released without prejudice to the rights of either the Government or the company, except 20,000 sacks now held by the customs authorities pending the payment of the regular import duties by the company. This impounding of articles of import, pending a dispute between the government and the owner as to whether or not the articles in question are dutiable, is, however, a necessary incident in the customs administration of every country and can not properly be deemed such a tortious seizure of property as to amount to a "confiscatory breach" of contract within the meaning of the words as used by Professor Moore. (See, supra, p. 137, and the cases collected by him.) This is a case of a clear breach of contract, but not a confiscatory breach.

According to Mr. Crichfield—and there seems to be no reason to doubt his accuracy on this point—the stipulation contained in the concession that neither the enterprise nor the products of its mines were to be burdened with any kind of taxes, except such as were prescribed by the then existing laws, was a condition without which he would not have accepted the concession. He inserted this condition in view of the experience of other American concessionaries and in order to prevent the Venezuelan Government from doing just what it has done, namely, waiting until the company had spent its money in Venezuela, and it was too late to withdraw, and then stepping in and appropriating the profits of the investment. The way in which the company fulfilled its obligations under the concession is thus described in a supplemental report of the Hon. William J. Calhoun, filed under date of November 22, 1906:

The company improved the River Limon by blowing up rocks, removing trees, digging a canal at its mouth more than half a mile long, deepening and widening its waterways, and making it navigable for some thirty miles. The company also constructed the railroad, and at its terminus, on the bank of the River Limon, it built a refining plant, warehouses, sawmill, residences and office buildings, erected houses for workmen and other buildings, and there established a village of several hundred inhabitants, who for the most part were in its employ. As a result of the enterprise it is said that what was once a trackless wilderness was opened up to settlement; clearings were made, farms were located, schools were established, and churches built. At the mine another village and settlement was made, and farms were opened up in that neighborhood. In making these improvements the company is said to have expended more than six hundred thousand dollars in cash.

The company commenced the operation of its mine, its railroad, and its refinery; it apparently conformed to its contract in every particular; paid its taxes regularly and obeyed the laws of the country, as became a good citizen. * * *

* * * * * * *

* * * In Venezuela, I heard this company spoken of in the highest terms. There is no scandal and no charge of bad faith attached to its record. * * *

The story told of the construction of this railroad is a thrilling one. It was built through forests, swamps, and almost impenetrable jungles. Crichfield and his assistant, David Fleming, spent months in these swamps and jungles, fighting against malarial fevers, snakes, wild Indians, and overcoming almost insuperable difficulties of one kind and other. It is a story of American courage, indomitable will, and triumphant success.

I was also informed upon the most reliable authority that the enterprise proved to be a great help to the section of the country in which it is located. The company employed hundreds of poor people, paid them good wages, established schools, and otherwise contributed to the development and progress of the country. The management kept clear of politics; and, although revolutionary forces oftentimes invaded the property, the management refused to pay tribute, furnish supplies, or to otherwise contribute thereto. It is apparently one instance, at least, where an American concessionnaire performed the obligations of his contract in good faith; and in the consideration of the case the Department may, I believe, rely upon that fact.

It appears to be a case where flagrant injustice has been inflicted upon a company which has lived up, in good faith, to all its obligations under the concession.

Again, as we have seen, although the questions involved are peculiarly proper for the decision of a judicial tribunal, and although the Venezuelan Government has specifically invited the company to exercise its unquestioned right of litigating in the courts of Venezuela, no such action has been taken. The company comes to the Department without having even attempted to seek relief through the ordinary tribunals of the country. It is therefore plainly within the rule which forbids diplomatic action until the ordinary means of judicial relief have been exhausted. It must be remembered, however, in considering the fact that this is a contract claim, pure and simple, and in considering the fact that no resort has been had to the courts of Venezuela, that it is a contract entered into in Venezuela with the Venezuelan Government, and that the courts to which the claimant might be remitted are Venezuelan courts, and that, as Secretary Fish said, it is useless to attempt to exhaust justice in a country where there is no justice to exhaust.

Under these circumstances it is recommended that the Department attempt to secure an arbitration of this case before an impartial international tribunal, and in adopting this recommendation the Department is only approving and following the recommendation and instruction of Secretary Hay, who, under date of January 28, 1905, recommended "an impartial arbitration of the cases of the Bermudez Company, Crichfield, Jaurett, and the revision of the Olcott award, and the trial of all these cases absolutely on their merits."

IN THE MATTER OF
THE NEW YORK AND BERMUDEZ COMPANY
v.
VENEZUELA.

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THE NEW YORK AND BERMUDEZ COMPANY.

MAY 24, 1906.

The New York and Bermudez Company is the owner, by virtue of certain titles hereinafter discussed, of an asphalt lake in Venezuela of which it has been dispossessed by certain tortious acts of the Government of Venezuela. The company has appealed to this Department to restore to it the possession of its property, and for damages sustained on account of injuries suffered by reason of its alleged unjust ejectment therefrom.

The object of this memorandum is to give a history of the case, including what are conceived to be its salient facts; to show in connection therewith the means employed by various individuals, with the apparent connivance of the Venezuelan Government, to deprive the claimant company of its rightful property; to show the successful efforts of the Venezuelan Government, following the unsuccessful attempts of its private antagonists, which have resulted in dispossessing the company of its asphalt lake; and to submit certain recommendations of action to be taken for relief of the petitioners.

The statements made herein are based upon Mr. Calhoun's report (hereafter referred to as the report), which accompanies this memorandum, and the diplomatic correspondence between the Department and our legation at Caracas, with an occasional reference to briefs and arguments by claimant or its counsel.

STATEMENT OF FACTS.

I. THE COMPANY'S TITLES.

The company's claim to ownership of the asphalt lake is based upon three different titles, each one lawfully acquired from the Venezuelan Government. These titles are as follows:

I. THE HAMILTON CONCESSION.

On September 15, 1883, Horatio R. Hamilton, an American citizen, obtained from Guzman Blanco, President of Venezuela, a concession or contract for the exclusive exploitation of asphalt and of the uncultivated lands in the State of Bermudez.

Article I of the concession gives "the right to explore and exploit the natural products of the forests," consisting principally of woods and resins, "existing in the uncultivated lands of the State of Bermudez." The district of Barcelona, comprising one-third of the territory in question, was excluded from the concession so far as the exploiting of its wood was concerned.

Article II grants "the right to exploit the asphalt in the said State of Bermudez."

Articles III, IV, V, VI, and VII grant the right to the importation of machinery, etc., to be used in the development of the concession and the right to the free navigation of rivers, and provided for a duty on all products of the concession.

Article VIII provided that the term of the concession should be twenty-five years, and that during such period "the Government will not grant any similar concessions for the State of Bermudez to any other person."

Article IX stipulated that the work should be begun within six months and contained a provision for the extension of this term for a like period. The conclusion of this article contains the only provision in the contract for a penalty for breach of conditions, and is as follows:

And in case of nonfulfillment of any of the stipulations expressed, this will annul the present contract ipso facto.

Article X provides that the contract may be transferred upon notice in advance to the federal executive.

Article XI contains the usual stipulation that all doubts and controversies arising under the contract should be settled by the courts of Venezuela in accordance with its laws.

The entire text of the concession is to be found on pages 5 and 6 of the report.

A "first additional article" was entered into on October 19, 1883, as follows:

According to the provisions made in Article V this present article fixes the duties which Mr. Horatio R. Hamilton shall pay for the wood he may exploit or export thus: For every 999½ kilograms of dyewoods, 3 bolivars; and for every 999½ kilograms of building woods, 2 bolivars 50 centimes.

The Hamilton contract and the additional article were approved by the federal congress June 5, 1884. This article was approved by President Crespo on June 6, 1884. The concession and its supplement were published in the Official Gazette July 21, 1884, No. 3300, and thereby had the force and effect of law.

On May 30, 1884, prior to the foregoing approval of Congress, a "second additional article" was entered into by Hamilton and the minister of fomento, as follows:

Hamilton binds himself to channel, for exportation and importation, one or more of the rivers of the State of Bermudez, beginning with Cano Colorado and Guarapiche, as far as Maturin. The Government grants him the exclusive right of navigation on the rivers that he may channel, collecting a tax that will be fixed by agreement with the Government upon the ships or boats which may navigate therein, as soon as the rivers shall be channeled.

He will have the same rights in case of his constructing a railroad.

This article was not attached to the contract when the latter received the approval of Congress. The second additional article has never received specific approval.

Hamilton applied for and was granted several extensions of time within which to begin work, the last one being given in consideration of the payment by Hamilton of 2,000 bolivars, which was interpreted to run until April 30, 1886.

On October 24, 1885, the New York and Bermudez Company was incorporated under the laws of New York, and on November 16, 1885, Hamilton assigned his contract to them, including the "additional articles" thereof. (Report, p. 7.) This assignment was ap-

proved by the Venezuelan Government, December 9, 1885. (Report, p. 7.) No exception seems to have been taken to the fact that the Government's approval was obtained after instead of before the assignment.

The company immediately began the performance of its contract. (Report, p. 7.) Mr. A. H. Carner, one of the directors of the company, soon superseded Hamilton as manager, and not long afterwards the exploitation of the timber and the products of the forest was abandoned and the company directed its efforts solely to the development of the asphalt deposit. This deposit, the Bermudez Lake, so called, is situate in the municipality of Union, district of Benitez, section of Cumana, State of Bermudez. It covers about 1,000 acres. It is located about 11 kilometers on a direct line southeast of Guariquen, at an elevation of about 5 meters above the sea level. It is the only deposit of asphalt in that locality.

2. THE MINING TITLE.

Mr. Carner, as secretary of the New York and Bermudez Company, hereafter called the Bermudez Company, or the company, made application in 1888 under the law of mines to obtain a mining title to the asphalt deposit. This law provided that any person who had discovered a mine should file written notice with the president of the State in which the mine was located, describing it. The president then appointed two experts to verify the discovery and make a report, upon the receipt of which the State president granted a provisional title for two years. Application for a definitive deed was then made to the National President, and if the preliminary proceedings were found to be regular a final deed was granted, good for ninety-nine years. It was necessary, if the mine was located on wild lands and the applicant desired a title to a part thereof in connection with the working of his mine, to comply also with the law relating to wild lands and to secure a wild-land title. The mine was a property distinct from the land. Article XIII of the mining law provided that mining properties should be clearly marked by footpaths and with posts at all projecting or retreating angles of their boundaries.

The decree of the president of the State of Bermudez granting provisional title to Mr. Carner is dated October 22, 1888. It recites that the location of the mine, as taken from the report of the inspector of mines, was as follows:

> At a distance of 20 kilometers to the southeast of the village of Guariquen, and 180 meters above the level of the sea;

and that it was a vast surface, of a circular shape, all in swampy lands, over which were found large deposits of asphalt.

On December 5, 1888, the President of the Republic and the Federal Council resolved "that the definitive title of property to the said asphalt mine be granted for ninety-nine years in favor of Mr. A. H. Carner, secretary of the New York and Bermudez Company." On December 7, 1888, a definitive deed was executed in which the location of the property is described as follows:

> In the jurisdiction of the Parish Union, village of Guariquen, section of Cumana, of the State of Bermudez, at a distance of *20 kilometers* to the southeast of the said village of Guariquen, and at *180 meters* above the level of the sea.

There is not the slightest doubt that Mr. Carner acquired this title for the use of the company, but in order to avoid any question as to whether the mining title was held by Mr. Carner personally or in his representative capacity, he and his wife made an assignment of said title to the company on August 1, 1893.

3. THE WILD-LANDS TITLE.

Concurrently with the proceedings to obtain the mining title, Mr. Carner began proceedings to acquire title to the wild lands surrounding and including the asphalt lake.

According to the law of wild lands certain formalities were to be observed in order to obtain title thereto. It was provided that the purchaser should pay the expense of the final survey; that the surveyor should draw a topographical plan showing the location, extent, and limit of the land, after which an appraisal should be made of its value, and that this price should be paid by the prospective grantee in cash or in bonds at their market value.

On October 8, 1888, Mr. Carner applied for a wild-lands title, stating that he was secretary of the Bermudez Company, which had taken the necessary steps to acquire a provisional title to certain asphalt mines in the State of Bermudez—

> *on a road constructed by the company* toward the southeast, for a distance of 20 kilometers from Guariquen, up to a house belonging to the company and situate on this road, over a little hill before getting to a wooden bridge which leads to the surface of the asphalt deposit, and the boundaries of which are by the north, south, east, and west mangrove trees and swamps.

And he asked for a title to the "*wild lands that comprise the mines already mentioned* for the use of exploitation work."

A survey was made and a map was drawn by the Government surveyor, Mombello. The lands were described as being 180 meters above sea level—a mistake of fact which led to complications, the lake being actually but a few feet above the level of the sea. An appraisement was made of the property, which embraced about 14 square miles, at 3,792 bolivars. This sum was paid in bonds at their face value—not the market value, as required by law—but there was no concealment of this manner of payment, the consideration appearing upon the face of the grant, and no objection that full payment had not been made, and on December 14, 1888, a final deed was granted to the lands "in favor of the New York and Bermudez Company." (Report, p. 14.)

The company therefore asserts its right to the asphalt lake by virtue of the Hamilton concession, giving it the exclusive right to exploit asphalt in the State of Bermudez for twenty-five years from September 15, 1883; second, the right to exploit the asphalt lake for ninety-nine years from December 14, 1888, under the mining title; and, third, under the wild-lands title, the fee simple to the lands surrounding and covered by the lake.

A detailed statement of the proceedings in connection with the land and mining titles is given because their validity was assailed by the opponents of the company in the Warner-Quinlan suit, hereafter mentioned. The final decision of the court in that case was based upon an entirely different question and the result was that the land and mining titles remained unaffected by the proceedings. These

titles have never been impeached by the Venezuelan Government and they remain in the same force to-day that they had when granted, except that they have been strengthened by many governmental affirmations of their validity.

II.—Efforts to Oust Company from its Holdings.

A.—EFFORTS OF INDIVIDUALS.

1. THE FELICIDAD CLAIM.

On January 28, 1897, four Venezuelans took steps to acquire title to the asphalt lake owned by the Bermudez Company, as hereinbefore set forth, claiming that they had discovered a mine. The formalities they observed were somewhat different from those followed by the Bermudez Company, owing to changes that had been made in the mining law in the meantime. On June 22, 1897, a provisional title was obtained, and on November 30, 1897, a definitive deed was granted them. It is said that these proceedings were carried on secretly and that the company knew nothing of what was going on until after the definitive deed was granted.

The grantees resided only a few miles from the lake, at Guariquen. Their leader, Marcano, was a lawyer and a politician of some prominence. It is evident that he had examined the record of the company's land and mining titles and had discovered that a mistake had been made in all the papers in assigning an incorrect location to them. For, whereas the title stated that the Bermudez Lake was 20 kilometers from Guariquen and 180 meters above sea level, the lake is actually situated only 10 or 11 kilometers from Guariquen and is but 4 or 5 meters above sea level. They therefore claimed that their property, which they not inaptly named "Felicidad," was a different property from that described in the deeds and surveys of the Bermudez Company.

The first attack was made, however, upon the Hamilton concession, and on January 3, 1898, their attorney filed a petition with the minister of fomento for an annulment of that concession for failure to canalize one or more rivers, as provided in the second additional article of May 30, 1884, it being averred that the company had made no effort in ten years to commence this work and that the contract provided for forfeiture in case of the breach of any condition.

On the next day, January 4, 1898, without any notice to the company, or any judicial proceeding, President Crespo, by executive decree, annulled the Hamilton concession, not upon the ground of failure to canalize rivers but upon the general ground that the company had failed to develop any of the lands embraced in the concession except the asphalt lake, and that the Government was therefore not receiving the revenues it had anticipated from the contract. The decree, however, affected only the Hamilton concession. Concerning the asphalt lake the decree stated that the company own it "*as per concession obtained in conformity with* the mining laws," and in the actual words of annulment it was declared that annulment should take place "*without infringing the rights which, according to law, the New York and Bermudez Company may have by virtue of mining concessions.*" (Report, p. 17.)

The significance of this action of the Venezuelan Executive is that, while committing an act of grave injustice toward the company in annulling its concession without giving it an opportunity to defend itself, even such a despot as Crespo recognized that the company had rights to the asphalt lake which they held independently of the Hamilton concession.

The company then petitioned the minister of agriculture for a revocation of the decree, and the attorney-general, to whom the question was referred, gave his advice that the decree was illegal. This opinion appears to have been merely advisory. The matter was then referred to the high federal court, but that court held that it had no jurisdiction unless an action were brought.

Suit was thereupon begun by the company in the high federal court to set aside the executive decree of annulment, and on August 23, 1898, the court rendered its decision, declaring that the Hamilton concession having once been granted in pursuance of law, and certain rights having thereby become vested in the concessionaries, these rights could not be divested except by a judgment of a court of competent jurisdiction. Hence, the decree of President Crespo annulling the concession was declared to be invalid. This decision went no further than to deny the power of the President to declare the Hamilton contract canceled. The decision does not reach to the merits of the contract and left open the question of the right to such cancellation. (Report, p. 18.)

On May 25, 1900, Messrs. Warner and Quinlan bought the Felicidad mine from its owners, paying $40,000 therefor. Before the purchase they investigated, through their agent in Venezuela—Mr. Sullivan—the Bermudez Company's titles, and were informed that the later were defective and that the company could not maintain a claim to the Felicidad area.

2. THE VENEZUELA CLAIM.

In the meanwhile, certain other Venezuelans tried to secure title to another portion of Bermudez Lake, to which they appropriately gave the name of "Venezuela." Their first petition for a definitive deed to the property is dated May 7, 1900. This was soon followed by a second petition for the same properties. For a time they were unsuccessful. Mr. Carner, as secretary of the Bermudez Company, immediately protested against the proposed grant, setting up the land and mining titles of the company. His first protest was supplemented by five others during the next few months

This protest of the company had two results: First, a Government order was issued July 23, 1900, for a new survey of the property; and, second, on the same day an important decree was pronounced in favor of the company. (Report, pp. 22, 23.)

Decree of minister of fomento affirming the validity of the Hamilton contract, July 23, 1900.—This decree declared that the supreme civil chief of the Republic had resolved:

1. That the said company may exercise each and every of the rights granted to it under said contract, in the manner and under the terms set out in the said contract, and at any time whatever within the term provided in article 8; and

2. That the New York and Bermudez Company has the right of preference in every case of denunciation of asphalt mines or wild lands which constitute or are in the limits of the concession, on having previously complied with the requirements of the respective laws on the subjert.

(Signed) *For the National Executive,*
V. T. VILLIGAS PULIDO.

The decree, therefore, accomplished the double purpose of obtaining an executive approval of the Hamilton contract and an acknowledgment that the company had a preference upon all mining discoveries within the limits of the concession.

This period, the fall of 1900, is marked by lively controversy between the Warner-Quinlan aggregation and the company over the question of surveys. The survey that had been made in consequence of the executive order just mentioned (called the Llamozas survey) was unsatisfactory to Sullivan, because he claimed it had been made practically under the supervision of his adversaries. He therefore protested against it and a new one was ordered. In the meanwhile he continued to make the most of the argument that since the Felicidad mine was only 10 kilometers from Guariquen there could be no confusion between its boundaries and the titles of the Bermudez Company, because the latter was described by their deeds as being 20 kilometers from that place.

Another survey was ordered, this time by a commission to consist of a Government surveyor and two others, one chosen by each of the disputants. The Government member was Doctor Blanco, who reported that the maps which had been made by his colleagues were substantially similar and he approved both of them. The surveyor for the Warner-Quinlan Company filed no report, but only a map which showed the asphalt lake, the Felicidad and Venezuela claims on two sides of the lake, and the Bermudez Company's location on the extreme south. The report of Dr. German Jiminez, named by the company, was in substance as follows:

According to the official map of the Bermudez Company's survey (the Mombello map of 1888) the boundaries of its property were straight lines, at right angles, running east and west and north and south. The location of any one of these lines was sufficient to establish the boundaries of the company's concession. Hence, he said, he confined himself to the location of the north boundary line, as shown on the Mombello map.

According to the aforesaid map, the northern boundary line ran east and west, through a house, or "rancho;" the line extended 4 kilometers eastward and 2 kilometers westward, thereby determining the two extremities of the line.

In the company's petition of October 8, 1888, presented to the President of the State of Bermudez, praying for provisional title to wild lands to be used in connection with its proposed mine, it was stated that the mine was located on a road built by the company, "20 kilometers toward the southeast, from the town of Guariquen, to a house owned by the company, standing on this road and *situated on a small eminence before arriving at a wooden bridge, which leads to the surface of the asphalt deposit.*"

The house, then, which stood at the end of the road from Guariquen was located on the northern boundary of the survey. After a careful examination, the commission found on the north side of the lake a "rancho," standing exactly east and west, upon a small hill or eminence just before reaching the ruins of a wooden bridge which led to the surface of the asphalt deposit. If doubt existed as to the identity of this house with the one to which Mombello referred in his survey, then, assuming the latter house had disappeared, the other conditions specified in the petition still existed, viz, the small eminence and the bridge.

At the place in question there was found a small eminence and the ruins of the bridge leading to the asphalt lake. Southeast of Guariquen, and beyond the

remains of the bridge, there were no hills—only a plain of asphalt, the only one in the neighborhood, and, beyond, mangrove trees and swamps. This, therefore, was the only place which filled the conditions specified in the Mombello survey. It was also known that when the company commenced its operations it did so on the northern side of the lake and transported its exploited material to Guariquen, for which purpose it built a bridge to the lake, the ruins of which still remain.

Therefore, Mombello, in his map, made an error in locating the northern boundary line of this survey at the distance of 20 kilometers from Guariquen. But the location of this line was established by fixed monuments, which remain; and Mombello's error was an immaterial detail. It was not to be presumed the Government intended by its definitive deed to the company to locate the asphalt deposit therein described 20 kilometers from Guariquen, where there were neither "ranchos," nor hills, nor asphalt—nothing but mangrove trees. If there were various lakes of asphalt in that neighborhood it might be a question which one belongs to the company; but there was only one lake, and good faith removed the question of its identity with the one described by Mombello beyond discussion. (Report, pp. 25, 26.)

It should here be said that the mistake made in the company's deeds whereby the location of the lake was said to be 20 kilometers from Guariquen instead of 10 is a discrepancy which the company explains very naturally: That when the lake was first discovered, or at any rate at the time the Hamilton concession was obtained in 1883, the asphalt deposit was only accessible through a tropical jungle by way of a winding mule path, whereas the company, in the course of the development of its property, afterwards constructed a straight road direct to the mine from Guariquen, which shortened the distance about one-half.

The foregoing discussion of the land and mining titles does not have any direct application upon the issue of this case, because the Department has consistently held that these titles exist to-day, unimpeached and valid. But it has been thought well to go into the question at some length on account of the uniform attitude of the Department respecting controversies in which American citizens become involved with foreign governments, which is understood to be that it examines the right of the question at issue, as well as the strict law, and if it were developed that these titles were mere straw titles, defeasible upon appropriate action in the courts, and that the company had no righteous claim, it would have little support. But, as it appears, it is one whose justice is undoubted, and for this reason the pitfalls and ingenious technicalities which have been resorted to in order to defeat it have sometimes been set forth herein. The object of the pages immediately preceding is to show that the right of the matter is with the Bermudez Company.

Confirmation of title to Venezuela.—Regardless of the decree of the minister of fomento of July 23, 1900, the third petition for a definitive title to the Venezuela claim was made November 14, 1900, based upon the defectiveness of the company's titles. This petition was effective and on December 10, 1900, the minister of fomento in effect nullified his decree of July 23 by declaring through the director of territorial wealth, who was an officer subject to his orders, that the Hamilton contract did not convey the exclusive right to exploit asphalt in the State of Bermudez. The protests of Carner in behalf of the company were denied and a definitive title to Venezuela was granted on December 17, 1900. (Report, p. 27.)

3. SETTLEMENT OF THE WARNER-QUINLAN CONTROVERSY.

In January, 1901, after this Department had been informed that the Venezuelan Government contemplated dispossessing the company, by arbitrary Executive action, of rights of which it had been in undisputed possession for twelve years, it instructed Minister Loomis to "urgently request" and, later, to "peremptorily demand" of the Venezuelan Government a stay of all proceedings pending an investigation of the rights of the parties. The intervention of the Department seems to have had the effect of sending the parties to the courts, and on February 16, 1901, Warner and Quinlan commenced a suit against the company analogous to a bill in equity to quiet title to Felicidad. The complainants stated that they intended to operate their mine, but that the Bermudez Company claimed their title was not valid; that it was within the boundaries of their mining concession, and that also under the Hamilton contract the Government could not grant title to Felicidad. Complainants averred as to the mining title that an inspection of the deeds and surveys would show that Felicidad was not located within the area of the company's mining titles, and that the Hamilton contract did not confer the exclusive right to exploit mines, such a grant being unconstitutional. The complainants prayed that the Bermudez Company should acknowledge the validity of the complainants' title and that the court adjudge their title superior to the claims of the Bermudez Company.

It must not be lost sight of that the single object of this suit was to obtain a confirmation of title to Felicidad in the Warner-Quinlan Company.

The bitter legal controversy which grew out of this proceeding was prolonged over nearly a year and a half. In the course thereof there was much crimination and recrimination and many complaints of denials of justice. Mr. Carner, the manager, resigned his position and has since become the company's most bitter enemy. The company's attorney withdrew his connection with them. Two other attorneys succeeded him, and "during their connection with the case incidents occurred of tragic interest, in which both of them were imprisoned and one of them died." (Report, p. 32.)

Mr. Calhoun considered that no blame should attach to the Venezuelan Government on this account and that the counsel brought their misfortunes on themselves owing to their conduct in the management of the case.

Six months were consumed in dilatory pleadings. When the company finally made answer it alleged certain "inherent defects" in the Felicidad title and set up its prescriptive rights acquired under legal title and held for fourteen years. Still other answers were made which in our legal system would come under the head of dilatory pleadings. Much evidence was taken by each party in an earnest endeavor to support its own claim to the lake, and much recourse was had to maps, surveys, etc.

The decision of the Federal court was elaborate and exhaustive. (See pp. 163–175 of the company's last printed brief.) The court reviewed the case from the beginning and noted all the arguments advanced by each contestant. There was an elaborate discussion of

Articles III, IV, V, VI, and VII grant the right to the importation of machinery, etc., to be used in the development of the concession and the right to the free navigation of rivers, and provided for a duty on all products of the concession.

Article VIII provided that the term of the concession should be twenty-five years, and that during such period "the Government will not grant any similar concessions for the State of Bermudez to any other person."

Article IX stipulated that the work should be begun within six months and contained a provision for the extension of this term for a like period. The conclusion of this article contains the only provision in the contract for a penalty for breach of conditions, and is as follows:

And in case of nonfulfillment of any of the stipulations expressed, this will annul the present contract ipso facto.

Article X provides that the contract may be transferred upon notice in advance to the federal executive.

Article XI contains the usual stipulation that all doubts and controversies arising under the contract should be settled by the courts of Venezuela in accordance with its laws.

The entire text of the concession is to be found on pages 5 and 6 of the report.

A "first additional article" was entered into on October 19, 1883, as follows:

According to the provisions made in Article V this present article fixes the duties which Mr. Horatio R. Hamilton shall pay for the wood he may exploit or export thus: For every 999½ kilograms of dyewoods, 3 bolivars; and for every 999½ kilograms of building woods, 2 bolivars 50 centimes.

The Hamilton contract and the additional article were approved by the federal congress June 5, 1884. This article was approved by President Crespo on June 6, 1884. The concession and its supplement were published in the Official Gazette July 21, 1884, No. 3300, and thereby had the force and effect of law.

On May 30, 1884, prior to the foregoing approval of Congress, a "second additional article" was entered into by Hamilton and the minister of fomento, as follows:

Hamilton binds himself to channel, for exportation and importation, one or more of the rivers of the State of Bermudez, beginning with Cano Colorado and Guarapiche, as far as Maturin. The Government grants him the exclusive right of navigation on the rivers that he may channel, collecting a tax that will be fixed by agreement with the Government upon the ships or boats which may navigate therein, as soon as the rivers shall be channeled.

He will have the same rights in case of his constructing a railroad.

This article was not attached to the contract when the latter received the approval of Congress. The second additional article has never received specific approval.

Hamilton applied for and was granted several extensions of time within which to begin work, the last one being given in consideration of the payment by Hamilton of 2,000 bolivars, which was interpreted to run until April 30, 1886.

On October 24, 1885, the New York and Bermudez Company was incorporated under the laws of New York, and on November 16, 1885, Hamilton assigned his contract to them, including the "additional articles" thereof. (Report, p. 7.) This assignment was ap-

proved by the Venezuelan Government, December 9, 1885. (Report, p. 7.) No exception seems to have been taken to the fact that the Government's approval was obtained after instead of before the assignment.

The company immediately began the performance of its contract. (Report, p. 7.) Mr. A. H. Carner, one of the directors of the company, soon superseded Hamilton as manager, and not long afterwards the exploitation of the timber and the products of the forest was abandoned and the company directed its efforts solely to the development of the asphalt deposit. This deposit, the Bermudez Lake, so called, is situate in the municipality of Union, district of Benitez, section of Cumana, State of Bermudez. It covers about 1,000 acres. It is located about 11 kilometers on a direct line southeast of Guariquen, at an elevation of about 5 meters above the sea level. It is the only deposit of asphalt in that locality.

2. THE MINING TITLE.

Mr. Carner, as secretary of the New York and Bermudez Company, hereafter called the Bermudez Company, or the company, made application in 1888 under the law of mines to obtain a mining title to the asphalt deposit. This law provided that any person who had discovered a mine should file written notice with the president of the State in which the mine was located, describing it. The president then appointed two experts to verify the discovery and make a report, upon the receipt of which the State president granted a provisional title for two years. Application for a definitive deed was then made to the National President, and if the preliminary proceedings were found to be regular a final deed was granted, good for ninety-nine years. It was necessary, if the mine was located on wild lands and the applicant desired a title to a part thereof in connection with the working of his mine, to comply also with the law relating to wild lands and to secure a wild-land title. The mine was a property distinct from the land. Article XIII of the mining law provided that mining properties should be clearly marked by footpaths and with posts at all projecting or retreating angles of their boundaries.

The decree of the president of the State of Bermudez granting provisional title to Mr. Carner is dated October 22, 1888. It recites that the location of the mine, as taken from the report of the inspector of mines, was as follows:

> At a distance of 20 kilometers to the southeast of the village of Guariquen, and 180 meters above the level of the sea;

and that it was a vast surface, of a circular shape, all in swampy lands, over which were found large deposits of asphalt.

On December 5, 1888, the President of the Republic and the Federal Council resolved "that the definitive title of property to the said asphalt mine be granted for ninety-nine years in favor of Mr. A. H. Carner, secretary of the New York and Bermudez Company." On December 7, 1888, a definitive deed was executed in which the location of the property is described as follows:

> In the jurisdiction of the Parish Union, village of Guariquen, section of Cumana, of the State of Bermudez, at a distance of *20 kilometers* to the southeast of the said village of Guariquen, and at *180 meters* above the level of the sea.

Articles III, IV, V, VI, and VII grant the right to the importation of machinery, etc., to be used in the development of the concession and the right to the free navigation of rivers, and provided for a duty on all products of the concession.

Article VIII provided that the term of the concession should be twenty-five years, and that during such period "the Government will not grant any similar concessions for the State of Bermudez to any other person."

Article IX stipulated that the work should be begun within six months and contained a provision for the extension of this term for a like period. The conclusion of this article contains the only provision in the contract for a penalty for breach of conditions, and is as follows:

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> In the jurisdiction of the Parish Union, village of Guariquen, section of Cumana, of the State of Bermudez, at a distance of *20 kilometers* to the southeast of the said village of Guariquen, and at *180 meters* above the level of the sea.

There is not the slightest doubt that Mr. Carner acquired this title for the use of the company, but in order to avoid any question as to whether the mining title was held by Mr. Carner personally or in his representative capacity, he and his wife made an assignment of said title to the company on August 1, 1893.

3. THE WILD-LANDS TITLE.

Concurrently with the proceedings to obtain the mining title, Mr. Carner began proceedings to acquire title to the wild lands surrounding and including the asphalt lake.

According to the law of wild lands certain formalities were to be observed in order to obtain title thereto. It was provided that the purchaser should pay the expense of the final survey; that the surveyor should draw a topographical plan showing the location, extent, and limit of the land, after which an appraisal should be made of its value, and that this price should be paid by the prospective grantee in cash or in bonds at their market value.

On October 8, 1888, Mr. Carner applied for a wild-lands title, stating that he was secretary of the Bermudez Company, which had taken the necessary steps to acquire a provisional title to certain asphalt mines in the State of Bermudez—

> *on a road constructed by the company* toward the southeast, for a distance of 20 kilometers from Guariquen, up to a house belonging to the company and situate on this road, over a little hill before getting to a wooden bridge which leads to the surface of the asphalt deposit, and the boundaries of which are by the north, south, east, and west mangrove trees and swamps.

And he asked for a title to the "*wild lands that comprise the mines already mentioned* for the use of exploitation work."

A survey was made and a map was drawn by the Government surveyor, Mombello. The lands were described as being 180 meters above sea level—a mistake of fact which led to complications, the lake being actually but a few feet above the level of the sea. An appraisement was made of the property, which embraced about 14 square miles, at 3,792 bolivars. This sum was paid in bonds at their face value—not the market value, as required by law—but there was no concealment of this manner of payment, the consideration appearing upon the face of the grant, and no objection that full payment had not been made, and on December 14, 1888, a final deed was granted to the lands "in favor of the New York and Bermudez Company." (Report, p. 14.)

The company therefore asserts its right to the asphalt lake by virtue of the Hamilton concession, giving it the exclusive right to exploit asphalt in the State of Bermudez for twenty-five years from September 15, 1883; second, the right to exploit the asphalt lake for ninety-nine years from December 14, 1888, under the mining title; and, third, under the wild-lands title, the fee simple to the lands surrounding and covered by the lake.

A detailed statement of the proceedings in connection with the land and mining titles is given because their validity was assailed by the opponents of the company in the Warner-Quinlan suit, hereafter mentioned. The final decision of the court in that case was based upon an entirely different question and the result was that the land and mining titles remained unaffected by the proceedings. These

titles have never been impeached by the Venezuelan Government and they remain in the same force to-day that they had when granted, except that they have been strengthened by many governmental affirmations of their validity.

II.—Efforts to Oust Company from its Holdings.

A.—EFFORTS OF INDIVIDUALS.

1. THE FELICIDAD CLAIM.

On January 28, 1897, four Venezuelans took steps to acquire title to the asphalt lake owned by the Bermudez Company, as hereinbefore set forth, claiming that they had discovered a mine. The formalities they observed were somewhat different from those followed by the Bermudez Company, owing to changes that had been made in the mining law in the meantime. On June 22, 1897, a provisional title was obtained, and on November 30, 1897, a definitive deed was granted them. It is said that these proceedings were carried on secretly and that the company knew nothing of what was going on until after the definitive deed was granted.

The grantees resided only a few miles from the lake, at Guariquen. Their leader, Marcano, was a lawyer and a politician of some prominence. It is evident that he had examined the record of the company's land and mining titles and had discovered that a mistake had been made in all the papers in assigning an incorrect location to them. For, whereas the title stated that the Bermudez Lake was 20 kilometers from Guariquen and 180 meters above sea level, the lake is actually situated only 10 or 11 kilometers from Guariquen and is but 4 or 5 meters above sea level. They therefore claimed that their property, which they not inaptly named "Felicidad," was a different property from that described in the deeds and surveys of the Bermudez Company.

The first attack was made, however, upon the Hamilton concession, and on January 3, 1898, their attorney filed a petition with the minister of fomento for an annulment of that concession for failure to canalize one or more rivers, as provided in the second additional article of May 30, 1884, it being averred that the company had made no effort in ten years to commence this work and that the contract provided for forfeiture in case of the breach of any condition.

On the next day, January 4, 1898, without any notice to the company, or any judicial proceeding, President Crespo, by executive decree, annulled the Hamilton concession, not upon the ground of failure to canalize rivers but upon the general ground that the company had failed to develop any of the lands embraced in the concession except the asphalt lake, and that the Government was therefore not receiving the revenues it had anticipated from the contract. The decree, however, affected only the Hamilton concession. Concerning the asphalt lake the decree stated that the company own it "*as per concession obtained in conformity with* the mining laws," and in the actual words of annulment it was declared that annulment should take place "*without infringing the rights which, according to law, the New York and Bermudez Company may have by virtue of mining concessions.*" (Report, p. 17.)

The significance of this action of the Venezuelan Executive is that, while committing an act of grave injustice toward the company in annulling its concession without giving it an opportunity to defend itself, even such a despot as Crespo recognized that the company had rights to the asphalt lake which they held independently of the Hamilton concession.

The company then petitioned the minister of agriculture for a revocation of the decree, and the attorney-general, to whom the question was referred, gave his advice that the decree was illegal. This opinion appears to have been merely advisory. The matter was then referred to the high federal court, but that court held that it had no jurisdiction unless an action were brought.

Suit was thereupon begun by the company in the high federal court to set aside the executive decree of annulment, and on August 23, 1898, the court rendered its decision, declaring that the Hamilton concession having once been granted in pursuance of law, and certain rights having thereby become vested in the concessionaries, these rights could not be divested except by a judgment of a court of competent jurisdiction. Hence, the decree of President Crespo annulling the concession was declared to be invalid. This decision went no further than to deny the power of the President to declare the Hamilton contract canceled. The decision does not reach to the merits of the contract and left open the question of the right to such cancellation. (Report, p. 18.)

On May 25, 1900, Messrs. Warner and Quinlan bought the Felicidad mine from its owners, paying $40,000 therefor. Before the purchase they investigated, through their agent in Venezuela—Mr. Sullivan—the Bermudez Company's titles, and were informed that the later were defective and that the company could not maintain a claim to the Felicidad area.

2. THE VENEZUELA CLAIM.

In the meanwhile, certain other Venezuelans tried to secure title to another portion of Bermudez Lake, to which they appropriately gave the name of "Venezuela." Their first petition for a definitive deed to the property is dated May 7, 1900. This was soon followed by a second petition for the same properties. For a time they were unsuccessful. Mr. Carner, as secretary of the Bermudez Company, immediately protested against the proposed grant, setting up the land and mining titles of the company. His first protest was supplemented by five others during the next few months

This protest of the company had two results: First, a Government order was issued July 23, 1900, for a new survey of the property; and, second, on the same day an important decree was pronounced in favor of the company. (Report, pp. 22, 23.)

Decree of minister of fomento affirming the validity of the Hamilton contract, July 23, 1900.—This decree declared that the supreme civil chief of the Republic had resolved:

1. That the said company may exercise each and every of the rights granted to it under said contract, in the manner and under the terms set out in the said contract, and at any time whatever within the term provided in article 8; and

2. That the New York and Bermudez Company has the right of preference in every case of denunciation of asphalt mines or wild lands which constitute or are in the limits of the concession, on having previously complied with the requirements of the respective laws on the subjert.

(Signed) *For the National Executive,*
V. T. VILLIGAS PULIDO.

The decree, therefore, accomplished the double purpose of obtaining an executive approval of the Hamilton contract and an acknowledgment that the company had a preference upon all mining discoveries within the limits of the concession.

This period, the fall of 1900, is marked by lively controversy between the Warner-Quinlan aggregation and the company over the question of surveys. The survey that had been made in consequence of the executive order just mentioned (called the Llamozas survey) was unsatisfactory to Sullivan, because he claimed it had been made practically under the supervision of his adversaries. He therefore protested against it and a new one was ordered. In the meanwhile he continued to make the most of the argument that since the Felicidad mine was only 10 kilometers from Guariquen there could be no confusion between its boundaries and the titles of the Bermudez Company, because the latter was described by their deeds as being 20 kilometers from that place.

Another survey was ordered, this time by a commission to consist of a Government surveyor and two others, one chosen by each of the disputants. The Government member was Doctor Blanco, who reported that the maps which had been made by his colleagues were substantially similar and he approved both of them. The surveyor for the Warner-Quinlan Company filed no report, but only a map which showed the asphalt lake, the Felicidad and Venezuela claims on two sides of the lake, and the Bermudez Company's location on the extreme south. The report of Dr. German Jiminez, named by the company, was in substance as follows:

According to the official map of the Bermudez Company's survey (the Mombello map of 1888) the boundaries of its property were straight lines, at right angles, running east and west and north and south. The location of any one of these lines was sufficient to establish the boundaries of the company's concession. Hence, he said, he confined himself to the location of the north boundary line, as shown on the Mombello map.

According to the aforesaid map, the northern boundary line ran east and west, through a house, or "rancho;" the line extended 4 kilometers eastward and 2 kilometers westward, thereby determining the two extremities of the line.

In the company's petition of October 8, 1888, presented to the President of the State of Bermudez, praying for provisional title to wild lands to be used in connection with its proposed mine, it was stated that the mine was located on a road built by the company, "20 kilometers toward the southeast, from the town of Guariquen, to a house owned by the company, standing on this road and *situated on a small eminence before arriving at a wooden bridge, which leads to the surface of the asphalt deposit.*"

The house, then, which stood at the end of the road from Guariquen was located on the northern boundary of the survey. After a careful examination, the commission found on the north side of the lake a "rancho," standing exactly east and west, upon a small hill or eminence just before reaching the ruins of a wooden bridge which led to the surface of the asphalt deposit. If doubt existed as to the identity of this house with the one to which Mombello referred in his survey, then, assuming the latter house had disappeared, the other conditions specified in the petition still existed, viz, the small eminence and the bridge.

At the place in question there was found a small eminence and the ruins of the bridge leading to the asphalt lake. Southeast of Guariquen, and beyond the

remains of the bridge, there were no hills—only a plain of asphalt, the only one in the neighborhood, and, beyond, mangrove trees and swamps. This, therefore, was the only place which filled the conditions specified in the Mombello survey. It was also known that when the company commenced its operations it did so on the northern side of the lake and transported its exploited material to Guariquen, for which purpose it built a bridge to the lake, the ruins of which still remain.

Therefore, Mombello, in his map, made an error in locating the northern boundary line of this survey at the distance of 20 kilometers from Guariquen. But the location of this line was established by fixed monuments, which remain; and Mombello's error was an immaterial detail. It was not to be presumed the Government intended by its definitive deed to the company to locate the asphalt deposit therein described 20 kilometers from Guariquen, where there were neither "ranchos," nor hills, nor asphalt—nothing but mangrove trees. If there were various lakes of asphalt in that neighborhood it might be a question which one belongs to the company; but there was only one lake, and good faith removed the question of its identity with the one described by Mombello beyond discussion. (Report, pp. 25, 26.)

It should here be said that the mistake made in the company's deeds whereby the location of the lake was said to be 20 kilometers from Guariquen instead of 10 is a discrepancy which the company explains very naturally: That when the lake was first discovered, or at any rate at the time the Hamilton concession was obtained in 1883, the asphalt deposit was only accessible through a tropical jungle by way of a winding mule path, whereas the company, in the course of the development of its property, afterwards constructed a straight road direct to the mine from Guariquen, which shortened the distance about one-half.

The foregoing discussion of the land and mining titles does not have any direct application upon the issue of this case, because the Department has consistently held that these titles exist to-day, unimpeached and valid. But it has been thought well to go into the question at some length on account of the uniform attitude of the Department respecting controversies in which American citizens become involved with foreign governments, which is understood to be that it examines the right of the question at issue, as well as the strict law, and if it were developed that these titles were mere straw titles, defeasible upon appropriate action in the courts, and that the company had no righteous claim, it would have little support. But, as it appears, it is one whose justice is undoubted, and for this reason the pitfalls and ingenious technicalities which have been resorted to in order to defeat it have sometimes been set forth herein. The object of the pages immediately preceding is to show that the right of the matter is with the Bermudez Company.

Confirmation of title to Venezuela.—Regardless of the decree of the minister of fomento of July 23, 1900, the third petition for a definitive title to the Venezuela claim was made November 14, 1900, based upon the defectiveness of the company's titles. This petition was effective and on December 10, 1900, the minister of fomento in effect nullified his decree of July 23 by declaring through the director of territorial wealth, who was an officer subject to his orders, that the Hamilton contract did not convey the exclusive right to exploit asphalt in the State of Bermudez. The protests of Carner in behalf of the company were denied and a definitive title to Venezuela was granted on December 17, 1900. (Report, p. 27.)

3. SETTLEMENT OF THE WARNER-QUINLAN CONTROVERSY.

In January, 1901, after this Department had been informed that the Venezuelan Government contemplated dispossessing the company, by arbitrary Executive action, of rights of which it had been in undisputed possession for twelve years, it instructed Minister Loomis to "urgently request" and, later, to "peremptorily demand" of the Venezuelan Government a stay of all proceedings pending an investigation of the rights of the parties. The intervention of the Department seems to have had the effect of sending the parties to the courts, and on February 16, 1901, Warner and Quinlan commenced a suit against the company analogous to a bill in equity to quiet title to Felicidad. The complainants stated that they intended to operate their mine, but that the Bermudez Company claimed their title was not valid; that it was within the boundaries of their mining concession, and that also under the Hamilton contract the Government could not grant title to Felicidad. Complainants averred as to the mining title that an inspection of the deeds and surveys would show that Felicidad was not located within the area of the company's mining titles, and that the Hamilton contract did not confer the exclusive right to exploit mines, such a grant being unconstitutional. The complainants prayed that the Bermudez Company should acknowledge the validity of the complainants' title and that the court adjudge their title superior to the claims of the Bermudez Company.

It must not be lost sight of that the single object of this suit was to obtain a confirmation of title to Felicidad in the Warner-Quinlan Company.

The bitter legal controversy which grew out of this proceeding was prolonged over nearly a year and a half. In the course thereof there was much crimination and recrimination and many complaints of denials of justice. Mr. Carner, the manager, resigned his position and has since become the company's most bitter enemy. The company's attorney withdrew his connection with them. Two other attorneys succeeded him, and "during their connection with the case incidents occurred of tragic interest, in which both of them were imprisoned and one of them died." (Report, p. 32.)

Mr. Calhoun considered that no blame should attach to the Venezuelan Government on this account and that the counsel brought their misfortunes on themselves owing to their conduct in the management of the case.

Six months were consumed in dilatory pleadings. When the company finally made answer it alleged certain "inherent defects" in the Felicidad title and set up its prescriptive rights acquired under legal title and held for fourteen years. Still other answers were made which in our legal system would come under the head of dilatory pleadings. Much evidence was taken by each party in an earnest endeavor to support its own claim to the lake, and much recourse was had to maps, surveys, etc.

The decision of the Federal court was elaborate and exhaustive. (See pp. 163–175 of the company's last printed brief.) The court reviewed the case from the beginning and noted all the arguments advanced by each contestant. There was an elaborate discussion of

the Hamilton contract. The court had no doubt of its exclusive character. In one place the court says that the National Government was not able, during the term of the contract, "to grant like concessions as regards the State of Bermudez to any other person." Further on in the opinion the statement is made that the Hamilton contract is "clothed with all the forms and engenders all the consequences of a privilege granted to the contractor and his assigns, in order that they alone * * * might be able to exploit the asphalt," etc. The court took occasion to observe that the action of the Felicidad concessionaires in attempting to have the Hamilton concession annulled by Executive decree "clearly demonstrated" that they consider its existence as an insuperable obstacle in the way of a valid title to their property. The court goes on to say:

It has been desired to attach great importance to this resolution of the ministry of fomento for the purposes of this suit, the fact being that it is only a simple administrative decision of equal value with the resolution of the same ministry dated the 4th of January, 1898, which sought to declare the termination of the Hamilton contract, and this is so because, even admitting that the said contract collided with the National Constitution and the law of mines, or that it ought to be rescinded on account of the contractor and those claiming under him not having fulfilled their obligations, such circumstances in no way alter the nature or the judicial effects of the contract, inasmuch as that collision or that rescision are not legally declared by the competent authority. It is therefore understood that the New York and Bermudez Company has had perfect right to say whether, in their petition to the ministry of fomento dated the 17th of July, 1900, or in the written objection taken by Dr. José Loreto Arismendi against Gen. Jacinto R. Pachano, or in various parts of the proceedings, and even in the last verbal addresses of its defense, that in accordance with the terms of the Hamilton contract, of which it is cessionary, the National Government had no power to grant titles to mines in the old State of Bermudez to any other person or corporation in contravention of the terms of the contract.

The decision is then announced on two separate and distinct grounds:

First. By reason of Article VIII of the Hamilton contract, which had acquired the character of a law of the Republic, the National Government could not give title to Felicidad nor grant in the old State of Bermudez mining concessions of asphalt to any other person or corporation in contravention of the terms of the Hamilton contract, and it therefore became unnecessary to investigate "whether, according to the testimony of the witnesses and the documents of title and the plans put in, the mine Felicidad and the asphalt lake which the Bermudez Company is exploiting are two distinct things, or whether one is part of the other," because no mining concessions could be given while the grant remained in force.

Second. The court furthermore stated that "in addition to the grounds expressed, the title of the Felicidad suffers from defects which vitiate it and which are recorded in the proceedings, owing to the requisite prescriptions and solemnities not having been complied with, under pain of nullity, provided by the code of mines, defects which * * * can not be amended."

The court in its decision was careful to leave untouched the question of the sufficiency of the land and mining titles. These, in fact, were ignored. Likewise, no attempt was made to construe the Hamilton concession, which was simply recognized by the court as an existing law of the land which had not been properly impeached in a judicial proceeding. Whether it was subject to impeachment or annulment was a vital question not touched upon.

with a gunboat for the property. The company received no notice of what was happening until the afternoon of July 22, when its manager, Captain Wright, was served with the summons.

The company, through its local manager, Captain Wright, lost no time in protesting against these proceedings, but the protest was ineffective. The basis of this protest was that only by a perversion of its terms could the Hamilton concession be called a lease. Earnest representations were made to the judge that his power to issue the order of sequestration was discretionary and that very great damage would result to the company if he allowed the order to stand. The land and mining titles appear not to have been mentioned in this protest.

Meanwhile, Carner took possession of the property of the company at Guanoco under order of the court. In his expedition he was accompanied by armed troops. The evidence as to the manner of taking possession of the property is conflicting, the company maintaining that its employees were treated with violence, whereas the record shows that the proceedings were conducted in a peaceable manner.

If the company's representatives were treated as alleged, the circumstance is one merely of aggravation. It is not considered essential to determine this fact.

The company's answer to the sequestration proceeding denied both the law and the facts adduced as a ground for the same. The answer set forth that even if the Hamilton contract were a lease the proof furnished by the exhibits to the complaint were not sufficient to justify the order of sequestration; that the alleged obligation to canalize rivers was in the alternative—that is, to canalize one or more rivers *or* to build a railroad, and the obligation had been fulfilled by the construction of its railroad from the lake to Guanoco, which was then the subject of sequestration; that Mr. Carner, who had been appointed receiver, was its notorious enemy, and they protested against his appointment; and, finally, the company asserted that the asphalt lake, lands, and appurtenances—

> *do not belong to it by virtue of the so-called Hamilton contract*, which is the subject-matter of this suit, but by virtue of titles which were legally granted to it by the National Executive powers of Venezuela on the 7th and 14th of December, 1888, * * * and, although it is true that the remote occasion of those titles was the contract now under discussion, it is not less true they also have their immediate judicial causes, which are proper and peculiar to them; *these being titles which have never been discussed, and are not susceptible of discussion in the present suit.*

One incident occurred during these proceedings which serves to illustrate the lack of good faith on the part of the Government. When Mr. Carner made his first report as receiver, he stated that he was selling asphalt for the sum of $5 per ton, the same price as the company's account books showed was being obtained by the company prior to the receivership. It has been ascertained that this sum of $5 per ton, which was shown by the company's books, did not represent the price of the asphalt, but was merely an estimated value for insertion upon the invoice of the cargo to serve as a basis for insurance. The shipments were merely transfers between two warehouses of the same company in different countries and there was no need of making a valuation for purposes of sale. The actual value of the

as well as under a second undisputed valid title to the same property good for ninety-nine years, without even impeaching the validity of such titles, the procedure will be set forth with considerable care.

The sections of the code of civil procedure upon which the attorney-general relied for the right of sequestration are as follows (Report, pp. 46, 47):

ART. 373. Sequestration shall be decreed:

* * * * * * *

7. Of the property leased, if the defendant is sued for default in payment of rental; on account of the property becoming deteriorated, or on account of having failed to make improvements to which he is bound by the contract; provided any of the circumstances be proved in the manner indicated in article 368.

In this case the owner, and the purchaser in the case mentioned in No. 5, may demand an order that they themselves shall remain subject to answer the lessee or purchaser when necessary.

ART. 368. At any stage or epoch of the cause whatsoever, if there is proof of the right sued for, although it may be by deposition of witnesses, when this proof is admissible according to the civil code, any of the parties may request, according to the case, and the judge may grant:

1. Prohibition to alienate the subject-matter of the suit.
2. The sequestration of determinate properties.
3. Deposit of security, and in default thereof, the attachment of sufficient property.

The complaint alleged that the Hamilton contract was a lease "the subject-matter of which is the enjoyment of all the natural products existing in the wild lands of the former State of Bermudez;" that the proofs submitted in support of the complaint "clearly demonstrate that the lessee has omitted to make improvements which by the contract it is bound to make, such as the canalization of the rivers of the State," and motion was made for a decree of sequestration of the mine, with all the properties and appurtenances of the exploitation.

The stipulation to make improvements to which the attorney-general refers is found, not in the Hamilton contract, but in the so-called "second additional article" (p. 155, supra), which contains no penalty clause. The only penalty clause in the Hamilton contract is the clause prescribing forfeiture for nonfulfillment of conditions (p. 154, supra). It will hereafter appear that the contract established by the so-called "second additional article" was repudiated by Venezuela as far back as 1887, so that the foundation of the attorney-general's petition rested upon a void agreement.

The "proofs" submitted by the attorney-general were one telegram to the minister of the interior based "on trustworthy information" (and therefore hearsay) that the company had not canalized any rivers or exported any natural products other than asphalt, and three exceedingly meager affidavits to the same general effect.

On the next day, July 21, 1904, the judge ordered a summons to be served upon the company's representative at Caracas, returnable in ten days. On the same day the judge, at the suggestion of the attorney-general, before summons had been served upon the defendant, and without giving the company any opportunity whatever to be heard, entered an order of sequestration of the company's property at the Bermudez Lake, appointed as receiver Mr. Carner, the defendant's bitter enemy, and required no bond from him. The next morning, July 22, Mr. Carner qualified as receiver and set out

with a gunboat for the property. The company received no notice of what was happening until the afternoon of July 22, when its manager, Captain Wright, was served with the summons.

The company, through its local manager, Captain Wright, lost no time in protesting against these proceedings, but the protest was ineffective. The basis of this protest was that only by a perversion of its terms could the Hamilton concession be called a lease. Earnest representations were made to the judge that his power to issue the order of sequestration was discretionary and that very great damage would result to the company if he allowed the order to stand. The land and mining titles appear not to have been mentioned in this protest.

Meanwhile, Carner took possession of the property of the company at Guanoco under order of the court. In his expedition he was accompanied by armed troops. The evidence as to the manner of taking possession of the property is conflicting, the company maintaining that its employees were treated with violence, whereas the record shows that the proceedings were conducted in a peaceable manner.

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crude asphalt is placed by the company at $11, and the difference between these two sums represents the amount less than the market price at which the product is being sold. The company alleges that the cargoes are being disposed of at this low rate to friends of Mr. Carner in New York, who are business rivals of the Bermudez Company.

Little pertinent evidence seems to have been offered by the Government in support of the sequestration proceedings. The most important proof, perhaps, was the testimony of the witnesses who had furnished affidavits as to the canalization, but their testimony, Mr. Calhoun says (p. 46 of his report), "only tended to show there had been no canalization of rivers, but as the defense offered no proof the Government was entitled to the benefit of whatever reasonable deductions this evidence justified." The report shows that the attorney-general made a strong argument for the sequestration of the property, based upon the contention that the Hamilton contract was a lease. He also denied that the "canalization" article was in the alternative, as contended by the company, and asserted that there was a positive obligation to canalize one or more rivers, the consideration being the right to their exclusive navigation, and that while the contract stated that Hamilton should have the same right if he constructed the railroad, there was no obligation to build such railroad, but the obligation to canalize rivers was positively declared. But, even admitting this, the obligation to canalize arose from the "second additional article," which has never been approved by the Congress and which never became incorporated in the original concession as an integral part thereof.

The argument of the company's attorney was to the effect that the contract was not a lease, but, even so, the subject of the lease was "the enjoyment of all the natural products of the unappropriated lands" of the State of Bermudez, which was equivalent to saying that the object of the lease was a usufruct, while the subject itself and the rights of the possessor had been embargoed. Other arguments were advanced, but they were principally a reiteration of those advanced in the company's answer. In conclusion, the company said: "The company is in possession of the sequestered asphalt mine *by right of titles which have not been, and can not be, discussed in the present suit*," which referred exclusively to the Hamilton contract.

After hearing the arguments, the court pronounced judgment affirming the previous order of sequestration. The court held that the contract had the features of a lease and that the company had not produced any evidence in its favor. No specific reference was made to the land and mining titles, and an examination of the record of proceedings in the case shows they were not introduced in evidence, although they were referred to by defendant in the manner indicated in the preceding paragraph and upon page 168, supra.

Appeal was taken from this decision to the high Federal court. In the course of a preliminary argument before the tribunal, it was again stated that "the mining title issued to the New York and Bermudez Company which gives it exclusive ownership over the lake of asphalt is not a title which is duscussed or which can be the subject of discussion in the incident of sequestration or in the principal suit upon which said incident depends."

The company's argument on the appeal was again confined mainly to the question of whether or not the Hamilton concession was a lease; nothing additional of consequence was brought out in this proceeding. The court, in an elaborate decision, sustained the court below and justified the previous proceedings. There was still no specific reference to the company's land and mining titles. Regarding the general failure of defendant's proof the court observes that "the company did not establish the terms of its opposition." (Report, p. 50). This was the final decision on the sequestration issue. The proceedings were then remitted to the lower court for determination of the ultimate question of the right of the Government to have the Hamilton contract canceled.

During the progress of the sequestration proceedings the counsel for the company requested the Department to demand of the Venezuelan Government the restoration of the property. This request was not granted for the reason that the Department could not interfere with the process of the courts; but the Department did instruct Mr. Bowen to ask the Venezuelan Government to instruct its attorney-general to move the court to discharge the receiver, pending the litigation. This request the Venezuelan Government refused.

2. THE SUIT UPON THE "MAIN ISSUE" FOR THE CANCELLATION OF THE HAMILTON CONTRACT.

Much of the record in this suit is taken up with the same argument that was the principal contention in the sequestration proceeding, namely, whether the Hamilton contract was a lease. Since the suit in question, which had for its issue whether or not the concessionaries had defaulted upon their contract and should incur the penalty of forfeiture, is independent of the nature of the contract and is a question not of law but of fact—namely, whether or not the concessionaries have lived up to their contract—it is considered that further discussion upon this point is unnecessary, since Mr. Calhoun is of the opinion, which is sufficiently confirmed by his report, that the company had defaulted upon the concession by failure to develop it.

Other arguments advanced by defendant were as follows: The rights granted to Hamilton were optional, except that of exploration, and could be renounced, and he could exercise them or not at any time within the period of this concession; the minister of fomento had declared on July 23, 1900, that the company had performed all of its obligations; the obligations of the contract were personal; twenty-one years had elapsed since they accrued, and they were now barred by the statute of limitations; as the obligation to canalize rivers was alternative with the building of a railroad the company had discharged such obligation by building the latter; the company owned the lake by virtue of its mining title and not by the Hamilton concession; lastly, the contention that the granting of this concession had served to keep others out of the limits of the concession was false in fact, because the Government had already granted an infinite number of mining and wild-lands titles within the State of Bermudez, as the federal and State records abundantly show.

Evidence was introduced at the trial to show that the company had canalized no rivers and exploited no natural products of the forests. The proof consisted principally of letters and other docu-

mentary evidence bearing date long before the institution of this suit. Most of it was inadmissible in our system of law, but no exception was taken to its competency. The report of engineers was also introduced, showing that they had, under instructions, made an investigation of the condition of the Guarapiche River and were able to say that no canalization had ever been made as required by the Hamilton contract.

The defendant introduced evidence to show that some work had been done upon the concession a few years after it was granted; but the company did not prove a continuous development of its concession, and it would appear to be impossible for it to do so. Nothing appears in the record to show that as a matter of fact the company had kept up the work of exploitation of the forests, etc., which it had begun shortly after the first grant, and Mr. Calhoun, after a thorough examination of this question, likewise finds affirmatively that this work had been abandoned.

In the final argument of the attorney-general a résumé is made of the case, and the various contentions of the company are dealt with in detail. Regarding the land and mining titles which had been injected into the proceeding, the attorney-general said in substance that if the company could show titles other than those conferred on it by the Hamilton contract, the opportunity would arrive to present them, and when it did arrive, that would be the time to discuss and judge of their value; but that in this case the Government had asked for the dissolution of the contract, which appeared to be the origin of all the rights and obligations of the company, and when the judgment rendered in this case was to be executed, then would be the proper moment to discuss the question of the alleged titles. The attorney-general closed his argument by asking for the annulment of the contract on the ground that the company had failed to perform its obligations. (Report, pp. 58, 102, 103.)

The company's counsel, Doctor Bance, has made the following explanation of the manner and purpose of pleading the land and mining titles.

> The exceptions taken are those in answer to the demand.
>
> In that answer I invoked and alleged, under No. 9, the existence of the property titles of the mines and lands, adding that "those titles have never been discussed and can not be discussed in this suit." This same allegation I made in the answer to the sequestration. * * *
>
> I invoked and alleged the existence of those titles, as already stated, and in such a manner that the court was obliged to consider and solemnly appreciate their existence; but at the same time the court could not have analyzed or decided upon the validity or nullity of said titles. They exist, not having been annulled, and that existence solely is an obstacle insurmountable to the opposing party to legally hold the lake or the land, since the annulment of the Hamilton contract has nothing to do with these titles. * * *
>
> I did not present the original documents to the court because, for the sole effect of proving their existence, that presentation was not necessary, since the opposing party admitted their existence and that same party is the author of the documents and so expressly recognized them. (See pp. 35 and 36, brief of the attorney-general; and see art. 1336 of the civil code.)
>
> Furthermore, those documents and the transfer by Carner and wife were and are in the proceedings presented twice by the attorney-general in the sequestration and the principal suit, when I invoked and presented as proofs my brief in the Felicidad suit. They can never be presented better than by the opposing party.

The decision of the judge of first instance is based, and it would seem correctly so, upon the fact that the company had not continued

to work its concession. (Report, pp. 59, 60.) The opinion is lengthy. It reviews the entire history of the case, the claims of both parties, and the evidence introduced. The substance of the decision was that the two additional agreements were a part of the original contract; that the obligations of the contract must be performed; and that the evidence showed that the company had limited its performance to the exploitation of asphalt and had neglected to perform its other obligations. It also held that the stipulation to canalize rivers, which was not in the alternative and could not be satisfied by building a railroad, had not been performed. A decree was accordingly entered dissolving the contract and an order made "to pay the loss and damage sued for according to a just valuation of experts."

The company appealed from this decision, and on August 7, 1905, the federal and cassation court, the tribunal of last resort, affirmed the decision of the court below. No new facts were developed in these proceedings.

The appraisers appointed by the court to assess the damages against the company which the country had sustained through failure to exploit the forests within the territory covered by the Hamilton contract made their report on November 24, 1905, and returned an estimate of 1,065,000 bolivars.

3. THE "REVOLUTIONARY" SUIT.

There is another suit which has been brought against the company, alleging that it aided the Matos revolution against Castro. The truth of this charge is denied by affidavits filed in the Department. It has been sought to make it appear that the company's property has been seized in consequence of this charge. This impression is unfounded. The revolutionary suit was brought subsequently to and had no legal connection with the seizure of the company's property.

No provision of the Venezuelan code has been cited by the Venezuelan Government which can fairly be interpreted to support this suit, and the Department has been unable to find any authority whatever for it in Venezuelan law. The court of first instance has, however, sustained the competency of the Government to bring suit, although the question was squarely raised by the company at the trial. It is understood that the case is now pending in the Venezuelan courts upon its merits.

As this controversy has not reached a final settlement in the courts and does not in its present aspect affect the question of the spoliation of the company's property, it will not be further discussed here. It was thought necessary to refer to it, however, as it affects the company's status in Venezuela.

III. EFFORTS OF THE DEPARTMENT OF STATE TO OBTAIN JUSTICE FOR THE COMPANY DURING THE SEQUESTRATION PROCEEDINGS.

On July 25, 1904, the Department protested against the proceedings of the Venezuelan Government in connection with the sequestration issue, and on July 26 it requested that Government to defer seizure of the company's property until the matter could be fully investigated. On August 1, 1904, the Department notified the Venezuelan Government of the grave concern with which the United States would regard any illegal action against the company. On

August 15, 1904, Mr. Bowen was instructed to request the Venezuelan Government to direct its attorney-general to move the discharge of the receiver and to restore to the company its property pending the decision of the case on its merits. The Venezuelan Government had refused to allow the company to remain in possession of the property, except on condition that a deposit or payment of the sum of $10,000,000 be made. These requests were all fruitless. The Department then, on September 26, 1904, sent an elaborate instruction to Mr. Hutchinson, the American chargé at Caracas, reviewing the wrongs done the company, and urgently requested that it might be restored to the possession of its property, to remain therein until it was judicially decided that the company was not entitled to such possession. The instruction, with the exception of a few opening paragraphs, is embodied herein, as follows:

It is established by the records in the case that the Venezuelan Government, represented by its attorney-general, went into one of its courts and upon a complaint, in which the mining and land titles obtained by the company in 1888 were disregarded, secured an order for the appointment of a "receiver" for the company's property, on the pretext that the company was a mere "lessee" under the Hamilton concession of 1883; and this was done ex parte, without affording the company an opportunity to show cause why its property should not be so taken from it.

While it is stated in the order for the appointment of a "receiver" that the "extraordinary circumstances" required by law to justify such action had been established, and while it has been stated that the "receiver" was appointed as a precautionary measure, no substantial foundation whatever has been shown for either of these assertions, no disclosure or description has been attempted, and this Government is at a loss to imagine any that could be suggested with a show of seriousness, much less of plausibility. As to the "extraordinary circumstances" that were alleged to exist, the only one which any attempt was made to establish was that the company had failed to "canalize" or dredge an obscure stream in the recesses of the old State of Bermudez, in no possible way connected with the use of the company's property. The supposition that this failure, which, if it existed, had existed for twenty years, without any complaint or remonstrance on the part of the Venezuelan Governmen, suddenly created an emergency which justified the seizure of the company's property would be manifestly frivolous even if the company had been a mere "lessee" under the Hamilton concession.

But it is not alone the frivolity of the charge that shocks one's sense of justice in the present instance. It is a fact that on July 17, 1900, upon the application of Mr. A. H. Carner, the "present receiver" of the property, but then managing director of the New York and Bermudez Company in Venezuela, the Venezuelan Government, through Dr. Guillermo Tell Villigas Pulido, its minister of fomento, issued a decree declaring:

"That the New York and Bermudez Company has fulfilled, up to date, the engagements and obligations of the contract of which it is concessionary, entered into with the Executive power on the 15th of September, 1883, to which additions were made on the 19th of October following, approved by National Congress by law of the 5th of June, 1884, and confirmed by the high federal court by sentence of August 23, 1898, and that therefore the said contract is in full force and effect."

General Castro was then, as he is now, President of Venezuela. The Hamilton concession had been in force for seventeen years, and if the stream in question is "uncanalized" now, it was in the same condition then, nor has there been during the intervening four years any complaint or representation to the company of any failure on that score. It is evident, therefore, that the supposition of emergency is destitute of foundation, so that it would afford no justification for the seizure of the company's property, even if the company had been a mere "lessee."

But the fact was well known to the Venezuelan Government that the company, availing itself of the Venezuelan laws governing the acquisition of titles to mines and wild lands, obtained on December 7, 1888, by purchase, a definite title conveying to it the Bermudez Lake deposit and a right to work it for

ninety-nine years; and further obtained, on the 14th of the same month, the title to and absolute property in a tract of public lands including and extending beyond the asphalt deposit itself. Of these facts the Venezuelan Government can not deny knowledge, since the titles have been formally recognized by it and form part of its records. Indeed, when President Crespo, by his decree of January 4, 1898, attempted arbitrarily to terminate the Hamilton concession he expressly reserved the rights belonging to the company by virtue of its mining titles. These titles have not been impeached; but, if they had been, they would, by the universal principles of jurisprudence, written in the law of Spanish America as well as of the United States, give the company a clear right to hold the property till they were set aside by a legal decision duly and fairly rendered.

But while the so-called "receivership" was decreed in entire disregard of the company's rights, and in a manner neglectful of the plainest principles of justice, it is also necessary to point out that in its execution and management it has borne none of the characteristics of a legal proceeding.

The proceedings of the "receiver" have been conducted clandestinely, and every device has been employed to conceal his transactions. Charters of vessels to take away the company's property have been made secretly, and even their existence has been denied. When the steamer *Kennett*, whose chartering for Guanoco had been repeatedly denied, lately arrived in New York from that place, with asphalt taken by the "receiver," not from Bermudez Lake, but from deposits previously mined and stored by the company, all information was refused as to the destination of her cargo, which was consigned to the captain, who in turn declared that he knew nothing about it.

These transactions appear to bear none of the marks of a bona fide receivership, but, on the contrary, they characterize the recent proceedings as in fact an act of arbitrary and unlawful spoliation, though clad in legal forms.

The Government of the United States has sought to avoid even the appearance of interfering with or making any demands upon the Venezuelan courts, and it has not so interfered or made any such demands. This Government has, however, requested that of Venezuela to undo its own wrong, by directing its attorney-general to go into court and ask for the discharge of the "receiver," so that the property of the New York and Bermudez Company may be restored to its possession, there to remain till a lawful and just decision shall have shown that the company is not entitled to scuh possession. This it is in the power of the Venezuelan Government to do, and the Government of the United States must, under the circumstances, renew and earnestly press its request. Such compliance would be but an act of respect on the part of the Venezuelan Government to its own tribunals, whose process has been perverted to the perpetration of a grave injustice, the continuance of which this Government can not view without deep concern. It is evident that the avowed object of the proceedings was for all substantial purposes accomplished before they were fairly begun, and that, unless this condition of things shall be remedied, their further prosecution will be practically superfluous, their apparent object having already been accomplished. The Government of the United States is desirous to show toward that of Venezuela every possible consideration. It therefore indulges the hope that the latter will, as an act due to substantial justice, remove the present cause of complaint. But it is proper to add that the Government of the United States in any event can not stand by and permit the property of American citizens to be seized and appropriated by any foreign government through a gross and palpable perversion of the forms in which justice is administered in order to defeat the ends of justice.

You are directed to read this instruction to the minister of foreign relations, and to leave with him a copy of it.

The answer of the Venezuelan minister for foreign affairs, transmitted with dispatch No. 349, October 29, 1904, is a flat refusal to comply with the Department's urgent request. The minister maintains that the questions raised in the Department's instructions are matters for the Bermudez Company to present to the courts, with the process of which the Executive authority could not interfere. The statement is made that no party had the right to interfere in the suit except the plaintiff or defendant. The minister's plain inference was that the intervention of this Department was unjustifiable. He adhered to the contention that the attitude of his Government

in the sequestration proceedings was proper. His answer therefore was equivalent to a refusal to take any steps whatever to comply with the Department's wishes as expressed in the foregoing instruction. He carefully avoids making a systematic reply to the arguments presented therein.

On November 21, 1904, the Venezuelan Government was requested to speed the prompt and impartial and final hearing and decision of the case.

On January 9, 1905, the Department authorized Mr. Bowen to negotiate with the Venezuelan Government for arbitration of the controversy. On January 18 the Department cabled Mr. Bowen a draft protocol for arbitration in the Bermudez Case, whereby the controversy should be decided by three arbitrators, one to be named by the President of the United States, one by the President of Venezuela, and the third by both Presidents jointly. The protocol provided for the restitution of the asphalt mine as a basis for the arbitration of the amount of damages which the asphalt company had sustained by reason of its dispossession from its property and for the asphalt which the Venezuelan Government had mined and disposed of in the markets. The protocol was somewhat extreme in its requirement of a practical restoration of the status quo ante as regards the possession of the property, but it was adopted in this form for two reasons: First, for the reason that if the Venezuelan Government was willing to arbitrate, but objected to any of the provisions of the protocol, it could accept the principle of arbitration and state its objection to any specific provision proposed. The result of such negotiations would probably have been an agreement upon exact terms for the arbitration. Second, a special reason existed for the endeavor to reach an arbitration on the substantial basis of the proposed protocol. One Government does not enforce specific performance against another. The only feasible manner in which the title to the mine could be retained was by the method suggested in the draft protocol. If that draft had been accepted by the Venezuelan Government the arbitral tribunal would have had to pass simply upon the question of the title, which, if decided in favor of the company, the Venezuelan Government would have agreed to respect. The tribunal would then have assessed damages for temporary dispossession and the despoilment of the mine and the incidental injuries to the property. If, on the other hand, the arbitral tribunal had been simply clothed with power to hear the case and to assess damages, it would have been impossible for it to judge accurately and justly the value of the mine, which is indefinable.

On January 28 the Department again instructed Minister Bowen to try to get the Venezuelan Government to accept the principle of an impartial arbitration of the cases of the Bermudez Company, Crichfield, and Jaurett, and of the revision of the Orinoco Steamship Company award, and the trial of all these cases absolutely upon their merits.

The requests for arbitration have been met by constant refusals in the form of evasive answers. President Castro insists that the case of the Bermudez Company does not present a diplomatic question, and proposed that the two Governments enter into a general arbitration treaty in order to obtain a decision as to what is and what is not a diplomatic question. This proposal could not be taken seriously

by the United States, and the Venezuelan Government was so advised. To all of our requests the answers of the Venezuelan Government have been of such a character as to leave no reasonable doubt that it will not consent to arbitrate unless it is constrained to do so by arguments of a more forcible nature.

DISCUSSION AND ARGUMENT.

This is a complaint against a foreign government for grave wrongs done to a great American interest, which has gone to Venezuela, invested hundreds of thousands of dollars there, and paid out other hundreds of thousands which have gone into circulation in that country in wages to hundreds of employees. It has constructed warehouses, wharves, docks, a railroad, machine shops, sawmills, a plant for refining asphalt, an electric-lighting plant, and all the accessories of a modern establishment for building up a great industrial business. It has been despoiled of that business; its investment of more than a half a million of dollars is now in the hands of its business rivals, who are enjoying the results of its efforts without the cost of a penny, while the complainant's investment is a total loss on account of the unjustifiable action of the Venezuelan Government, under pretext of legal process, in confiscating its property acquired under lawful title, of which it has never been divested. The case has many phases, but in no instance will a mere technical legal advantage be relied upon, such as the claimant would be fully justified in doing at a regular trial, without showing also that the end is a righteous one.

The Department in dealing with the case has been almost rigidly severe in its attitude toward the company. Its case has been subjected to the strictest examination.

The conclusions which follow have been reached only after it has been shown, as it would seem beyond peradventure, that the company's claim is perfect, not only from a legal standpoint, but, more important still, from the standpoint of equity and the broad principles of right and of fair play.

In the course of this investigation it will be shown that the tribunals of Venezuela, by deciding that the Hamilton contract was a lease, gave to it a construction which it was incapable of sustaining even in the light of the Venezuela code; that the purpose of such an artificial construction was to make possible the seizure of the property, which could have been accomplished under no other pretext of law; that even this forced construction could by itself have availed the Government nothing, since the Hamilton contract provided only for the penalty of forfeiture, and not for damages, upon breach of condition; that recourse was thereupon had to a breach by the company of the terms of a void concession, independent of the Hamilton contract, but claimed by Venezuela to be a part thereof, but which was none the less void by the act of the Venezuela Government itself long years before; and, finally, since neither of the above concessions contained the suggestion of a pecuniary penalty for a breach of condition, it will be shown how an agreement auxiliary to the Hamilton contract, providing merely for the rate of duty payable on the company's exports of its products, has been distorted by the Venezuelan tribunals into a measure of damage for failure to export those products—thus decreeing a forfeiture of one contract

on account of breach of condition in a second independent contract, which was void, and awarding damages for breach of the first contract by invoking the provisions of a third and giving thereto a construction wholly inadmissible and never intended by either party to it, and in this manner adapting the so-called penalty of the third contract (the first additional article) to the original Hamilton concession.

To establish a claim for the Department's interference it should first of all appear that the complainant has had some vested right which it has lost. This complainant has shown such a right. Upon first examination it appears to have been a naked legal one—mere titles to property, which, it was suggested to the Department by interests in opposition to its own, would not stand the scrutiny of a judicial test. The Department was not obliged to examine those titles, for they had never been judicially impeached, and therefore there was a presumption of their validity; yet it did so, first, during the pendency of the Warner-Quinlan proceedings, and reached the conclusion not only that they were good, but also that those who were attempting to defeat them were inspired solely by the motive of plunder; and again during the recent proceedings, where an even greater and more arbitrary disregard of the company's rights has been shown. Throughout the controversy the Department has never gone further than strongly to insist that the company's land and mining titles should be considered valid until judicially shown to be invalid, and in no way has it prejudged the final question of their validity. But to the Department's representations President Castro has turned a deaf ear, and to the company's representations in court to the same effect like treatment has been accorded.

I. THE COMPANY'S TITLES.

The Bermudez Company until recently was in possession of its property under three different titles, namely, the Hamilton concession, a mining title, and a wild-lands title. An analysis of these titles will now be made.

The Hamilton concession.—This concession was approved by Congress in 1884 and had twenty-five years to run. It provided for the exploitation of timber lands within a huge area; also for the exploitation of asphalt within the same territory. The privilege was an exclusive one, and the penalty for breach of any condition was forfeiture of the whole concession. This is the only penalty contained in the contract, and the logical supposition would be that no other penalty would be attempted to be enforced for a breach.

When suit was finally brought by the Venezuelan Government for annulment of this concession a good deal of extraneous matter was introduced into the proceedings. But the principal point made by the Government, and after careful scrutiny it seems to be sustained, was that the company failed in its obligation to exploit the timber throughout the limits of the concession. The court so decided, and it would appear that this decision was correct. However, the entire Hamilton concession would have expired by limitation in 1909, and the company would have lost only the profits of the next few years if they rested their claim upon this contract alone. Their property rights, however, are based upon the land and mining titles.

The land and mining titles.—These titles underwent careful scrutiny when Warner and Quinlan, accompanied by ex-Senator Hiscock, of New York, as counsel, appeared before the Department in 1900 to try to establish the fact that the asphalt lake which was owned by the Bermudez Company was situated in a locality where there was no asphalt, and that the lake which the Bermudez Company had been working for years was not the Bermudez Lake but the lately discovered Felicidad, of which the Warner-Quinlan Company were the owners. The Department refused to be hoodwinked by such a plea. The explanation of the unfortunate discrepancy in the company's land and mining titles will, it is submitted, be sufficiently clear from an examination of pages 160–162 of this memorandum.

A further criticism of the company's land and mining title appears to have arisen quite recently. It was noted, but apparently not emphasized, by the Venezuelan attorney-general in the judicial proceedings (pp. 187, 188, infra), and it has been mentioned by the Venezuelan minister for foreign affairs in conversation with our chargé, Mr. Hutchinson (see No. 349, October 29, 1904, from Venezuela). This criticism is that since the Hamilton contract was an exclusive grant for the State of Bermudez there was no authority to make any other grants of land or mining or other titles within that area—that it was quite immaterial whether these titles afterwards came into the company's hands, and that the high federal court in the Felicidad suit refused to allow title to Felicidad upon the ground that such a grant would have been an infringement upon the exclusive character of the Hamilton contract.

There are three answers to such a contention:

1. The decision of the court in the Felicidad Case was based not only upon the ground just stated, but upon the ground that there were fatal defects in the Felicidad record which could not be cured. Therefore this one reason was amply sufficient to justify withholding title to Felicidad, and the remarks of the court regarding the exclusiveness of the Hamilton concession may be considered as little more than obiter dicta, since the other reason was controlling. If this answer seems to savor of casuistry, it is suggested:

2. That the decision of the court forbids the Government to grant titles to mines within the area of the concession to any other person than the concessionary. It did not forbid the concessionary himself to strengthen his own rights. It is true that Mr. Carner acquired the title, but he acquired it as secretary of the New York and Bermudez Company for the company, not for himself; the company, and not he, worked the mine and invested capital in it; and if it should be contended that the legal title was not vested in the company by the deed it would be idle to cite anything for the familiar doctrine that Carner, the employee, held the mining title in trust for his employer. The question regarding the wild-lands title is not open even to this much doubt. In that case Carner applied for the title, the company advanced the consideration, and the final deed was issued in the name of the company. It should also be remembered that Carner and wife afterwards, to make assurance doubly sure, transferred whatever interests they might have had in the mining title to the company.

Unquestionably, the stipulation of exclusiveness was for the benefit of the Bermudez Company, and to hold that a grant to the

secretary of the company, in the employ of such company, and for the benefit of said company was in violation of the company's rights is preposterous. It is therefore confidently asserted that neither the grant of the land nor mining titles can be held, by any fair construction, to be such a conveyance to any other person than the company within the intendment of the concession.

3. If neither of the above answers is considered to be sufficient, a third is suggested which is conclusive irrespective of the preceding: These titles are existing valid titles. They have never been impeached, much less set aside, in a judicial proceeding involving them, and until annulled by proper legal process they have the force of law. Should the Venezuelan Government desire to test the validity of the mining title, that can doubtless be done in a legal proceeding. Until the title is impeached and set aside by legal decision it is evident that the title must be regarded as unquestioned. Such action has, however, not been taken, nor does it seem ever to have been contemplated.

There is no answer to this argument. The only way to defeat it is to ignore it. That it has been so ignored, both by the courts before which the issue was raised and by the Venezuelan Executive, is one of the glaring incidents of the denial of justice which this company has suffered and is still suffering.

II.. MEANS ADOPTED TO DESPOIL COMPANY.

The means taken to despoil this company were twofold: First, through the conspiracies of private parties for a number of years, with apparent connivance in certain official quarters. These machinations, for whatever reason, finally proved abortive, and the decision of the high federal court of January, 1904, after tedious and expensive litigation, seems to have put a quietus upon these sinister attempts upon the property of the company.

PROCEEDINGS BY THE VENEZUELAN GOVERNMENT.

But where individuals failed the Venezuelan Government succeeded, and the suit instituted by the attorney-general on July 20, 1904, has resulted in the complete spoliation of the company's property.

The objects of this suit were twofold: First, to obtain possession of the company's property for alleged breach of condition; second, to secure the cancellation of the Hamilton contract and to obtain an award for damages for noncompliance with its terms. It should be stated that the attorney-general in his complaint incorporated both the first and the second additional articles of the Hamilton contract (pp. 154, 155, supra) as component parts of the concession.

1. *The sequestration suit.*

The receivership, or so-called sequestration proceedings, was grounded upon the allegation that the Hamilton contract was a lease "the subject-matter of which is the enjoyment of all the natural products existing on the wild lands of the former State of Bermudez;" and as the lessee had not made certain improvements which he

was bound to make—namely, the canalization of certain rivers in the State of Bermudez—a motion was made for the sequestration of the company's asphalt mine and all of its property at Guanoco, in accordance with article 373 of the code of civil procedure. In other words, under two of the sections of this code—one (art. 373) giving the owner of property the right of sequestration in case the lessee should fail to make improvements which he is bound by his contract to make, the other (art. 368) allowing the right of sequestration "at any stage or epoch of the cause whatsoever," within the discretion of the judge—a successful attempt was made to turn the company out of property to which they possess a freehold title as well as a ninety-nine-year term.

The following observations will be made with reference to these proceedings: (1) The second additional article providing for the canalization of rivers was not a part of the Hamilton contract, and is a complete agreement in itself, carrying its own consideration; (2) if the contract were a lease the only thing liable to sequestration is its subject-matter, which was the right to exploit certain lands, asphalt, etc.; (3) neither the Hamilton concession nor the second additional article contained any justification for an award of pecuniary damages, therefore the "first additional article" was invoked and the provision therein stipulating for the rate of duty on the company's exports of timber, etc., was strained into a measure of damages for failure to export such timber; (4) the Hamilton contract was not a lease and therefore there was no justification whatever for the proceedings; (5) and, lastly, the land and mining titles were brought to the attention of every court before which judicial proceedings were had, but were not recognized by them, although it affirmatively appears from the record that the high federal court was aware of their existence. The question of the existence of these titles was also presented directly by this Department to the Venezuelan Executive, and was likewise ignored in that quarter.

By way of inducement, before a discussion of the legal phases of this proceeding, let it be recalled that the suit was instituted July 20, 1904, asking for the sequestration; that the order of sequestration was issued the next day and Mr. Carner appointed receiver, and no bond required of him; that the following morning, July 22, 1904, the commission to execute the sequestration was issued, and that not until the afternoon of that day was summons served on the company's manager, notifying him of what was being done.

1. The obligation to canalize rivers is derived solely from the so-called "second additional article." This agreement was not a part of the Hamilton contract, and was never ratified by the Venezuelan Congress; therefore, no breach of any part of it can have any effect upon the Hamilton concession. This additional article provided for the canalization of one or more rivers in the State of Bermudez, and carried as its consideration the exclusive right of navigation and the right to levy a tax on ships and boats navigating them. It made no reference to the original contract; its subject-matter had nothing to do with the exploitation of asphalt; its obligation was separate and distinct from the obligation of the original contract—that is, the exclusive right to navigate the rivers canalized and to levy a tax on the vessels of others navigating them. Although immaterial, it may be contended with no little reason that these

articles created their own obligation and furnished their own compensation and were in every sense severable from the original contract, and a breach of the covenants in them can not be assigned as a breach of the original contract. The furthest the Government could go in a case of a breach would be to exact damages for nonfulfillment, but those damages would have to be proven and would necessarily be illusory.

Moreover, it seems that during the early years of the concession, when the canalization of one of the streams had been begun, a concession to navigate certain other streams was granted to another person, one Pinelli, which necessitated his use of the waters canalized by Hamilton, and when Hamilton complained to the minister of fomento of this breach of his exclusive rights he was informed that he had no exclusive right to the river he had canalized. (Report, p. 96.) Here was a direct repudiation of the contract by the Government.

The obligation to canalize rivers as expressed in this additional article was made the basis of the sequestration proceedings. No claim was made on any other ground. In view of the fact that the Government had expressly repudiated the second additional article, and of the distortion of the first additional article into a measure of damage for breach of the Hamilton contract, the use of those articles to form a basis for the sequestration without previous notice or a hearing, and the execution of the order with an armed military force, was an unjustifiable perversion of the forms of law, an abuse of judicial authority, and an act of notorious injustice.

2. The lessor is entitled to the sequestration "of the property leased," and nothing more. In this case the property "leased" was the right of enjoyment and exploitation of a vast tract of unexplored land, with the privilege of developing it by extracting therefrom its valuable timber and dyewoods, or, as the Attorney-General termed it (p. 167, supra), "the enjoyment of all the natural products existing on the wild lands"—a mere incorporeal interest in property. Under this so-called "lease" the concessionaries had the right to the use of this land for a period of twenty-five years. They had title to not so much as a blade of grass growing thereon, or to a twig or a stone, without actually reducing them to possession by separating them from the soil. At the end of the twenty-five year period the entire interest in the land—the mere right of user—expired by limitation and the property reverted to the State.

Having these facts in mind we can now ask, What interest was properly subject to sequestration under any system of law? Obviously only the company's interest, acquired under the Hamilton concession—the right to develop a certain district in Venezuela, and nothing more. Yet in levying the attachment the absurdity of the entire procedure became apparent when the Venezuelan Government proceeded, not against the intangible subject-matter of the lease, but against the tangible private personal property of the Bermudez Company—its railroad, its refinery, its shops and other outbuildings, its moneys, and even its asphalt, which, to the extent of several thousand tons, it had taken from the lake and prepared for the factory. The Venezuelan Government is not holding this property in custody, as contemplated by the code, but is using and consuming it, and is actually carrying on business therewith in competition

with the company. The seizure went far beyond the authority of the code, and was harsh, oppressive, and unjustifiable.

The assumed justification for the sequestration was the failure to canalize rivers, which was designated an "improvement" (art. 373) on the subject-matter of the contract, which in turn was defined to be a right of enjoyment of exploration and of exploitation. The obligation to canalize rivers, provided for by the second additional article, was the subject of a subsequent and independent contract.

3. The first additional article stipulated the rates which Hamilton should pay upon "the wood he may exploit or export." The manner in which this agreement has been converted into a penalty has already been set forth.

4. If what has been heretofore contended for is correct, it is immaterial whether the Hamilton concession was or was not a lease. Enough of an examination of the instrument will be made, however, to show that it was not a lease, and had not the characteristics thereof, but partook rather of a license coupled with an interest.

In United States *v.* Gratiot (14 Pet., 526) the Supreme Court said: "The legal understanding of a lease for years is a contract for the possession and profits of land for a determinate period, with the recompense of rent." The characterization of the original contract as given in the Government's complaint does not meet this definition of a lease. The complaint stated that the subject-matter of the contract was "the enjoyment of all the natural products existing on the wild lands of the former State of Bermudez." The contract did not convey the possession of any determinate property, or give an exclusive interest in any land. It only granted the incorporeal right to explore and exploit the natural products in an indefinite and uncertain territory. It was only a right of enjoyment, a right to take and use such products. These products were, as the complaint stated, the subject of the contract. The use of the lands was only temporary and an incident to the right to take the products therefrom. The Government still retained possession and control of the wild lands for all other purposes, and, as a matter of fact, repeatedly exercised such control during the life of the Hamilton concession by granting other land and mining and similar titles to divers other strangers. The contract was, therefore, a license, irrevocable and coupled with an interest. This view of the contract is confirmed by the following cases: Funk *v.* Haldeman, 53 Pa. St., 237; Doe *v.* Wood, 2 Barn. and Ald., 736; Boone *v.* Stover, 66 Mo., 430; Brant *v.* McKeever, 18 Pa. St., 70; Ohio Oil Co. *v.* R. R. Co., 4 C. C. Ohio, 215; or it may be considered a profit à prendre.

5. Upon an examination of the judicial proceedings in the sequestration suit it is discovered that on December 1, 1904, the minister of fomento, in reply to a note from the president of the federal and cassation court of October 14, 1904, requesting the information, sent the latter functionary "a certificate relating to titles to mines and wild lands issued by this ministry, of denunciations in the former State of Bermudez, from 1883 to the present time, and a certified copy of the official notes, Nos. 374 and 375, transmitted to the civil and military chiefs of the former States of Cumana and Maturin on July 23, 1900." The "certificate" referred to was a statement showing that thirty definitive land and mining titles had been granted within the area embraced in the Hamilton concession during the time

specified, and the copies of the "official notes" referred to are found upon investigation to be two communications, each dated July 23, 1900, signed by the minister of fomento, Dr. G. J. Villigas Pulido (one of which is set forth on page 160, supra), and both of which confirm the land and mining titles in the New York and Bermudez Company and declare that that company has a preference in the securing of all similar titles within the State of Bermudez by virtue of the Hamilton concession.

No better proof need be offered to show that the land and mining titles had been brought to the attention of the court and had been considered by it, unless it be the letter of the court to the minister of fomento, dated October 14, 1900, calling for information concerning them. This letter, after careful search, has not been found in the record of the judicial proceedings in the case, and hence can not be set forth herein.

Doctor Bance, the company's attorney, states (p. 172, supra) the manner and purpose of the defense in its introduction into the pleadings of the land and mining titles, and extracts from the record containing this plea have previously been set forth herein (pp. 168-170, supra). It will be recalled that the proceeding in which it was introduced was one having for its object the annulment of the Hamilton concession. The defense directed the court's attention to the fact that the company was in possession of its property under certain titles of greater dignity than the Hamilton concession—titles which have never been questioned and were not open to question in the proceeding. In the main issue, the portion of the defendant's answer which relates to these titles is as follows:

> On the other hand, the company most solemnly states that the asphalt lake and lands and other appurtenances which it holds in Guanoco, municipality of Union (Guariquen), District Benitez, in the State of Bermudez, and which have been sequestrated, do not belong to it by virtue of the Hamilton contract, which is the subject-matter of this suit, but by virtue of the titles which were legally granted to it by the national executive power of Venezuela on the 7th and 14th of December, 1898, both filed in the protocol of the subaltern registration office of the district of Benitez (El Pilar) on the 11th day of December, 1890, the first protocol of the fourth quarter of that year, on folios 100, 101, and 102, under numbers 61 and 62; and although it is true that the remote occasion of those titles was the contract now under discussion, it is no less true that they also have their immediate judicial causes which are peculiar and proper to them, these being titles which have never been questioned and are not susceptible of question in the present suit.

These answers of the company were made in August, 1904. In the following October the company's attorney, in summing up the arguments in the sequestration case, said:

> And whereas, finally, the company holds the asphalt mine sequestrated under titles which have not been discussed, and which can not be the subject of discussion in these proceedings, in which the resolution of the Hamilton contract only is involved, which titles on the other hand, exist independently of the said contract, and which do not collide with it in any manner whatsoever.

The Attorney-General's reply to the defendant's pleading of its land and mining titles in the main issue is as follows:

> This argument has a scope exceeding the limits of the controversy. If the company can produce other titles than those granted it by the Hamilton contract an opportunity will arrive for it to do so; then would be the moment to discuss and estimate their true value. In demanding the resolution of the contract, the plaintiff has been obliged by necessity to stand on the contract, which is a law of the Republic and which appears as the principal origin of all the rights *and obligations* of the contractor.

In the argument under discussion the defendant has desired to establish emphatically that the asphalt lake and lands and the other appurtenances it has in Guanoco do not belong to it by virtue of the Hamilton contract, the subject-matter of this litigation, but by virtue of other distinct titles. This is called, citizen judge, to take medicine when one is healthy (curarse en salud). The company, foreseeing the result of the proceedings, at this time advances the desire to avoid the return of the property to which it alludes which it would be forced to make through the resolution of its contract by the judgment which may be rendered in this suit; when that judgment is about to be executed and the defendant should persist in his rash claim, then will be the time to discuss the illegality of the reasoning on which it is based; for the present, it is sufficient for me to remark to the tribunal that the judgment rendered in the litigation instituted by Messrs. Warner and Quinlan against the New York and Bermudez Company, before the former federal court, the court declared that—

"The Hamilton contract having acquired the character of a law of the Republic when it was approved by the National Congress, said contract created for twenty-five years a special condition for the exploitation of asphalt and other natural products in the territory of the former State of Bermudez—that is to say, that such exploitation was to be made solely by the New York and Bermudez Company in a general manner, according to the terms of the contract, and for the period prescribed."

Now, then, the titles invoked by the defendant company were originally granted to Mr. A. Howard Carner, and all of them contain a vice or defect which renders them null, by reason of having been given in contravention of the express provisions of a law, and they can not, therefore, be opposed to the said law. That in petitioning for and in obtaining such titles Mr. Carner did not act in the name of the New York and Bermudez Company is established by the fact that the latter considered the transfer thereof in its favor to be necessary, no only by Carner, but also by his wife, as property acquired during the existence of the conjugal partnership.

Much discussion and much contrariety of opinion has arisen over the question of the sufficiency of the pleading of the company's land and mining titles. Whatever view may be adopted, one fact has been definitely ascertained, which is that neither the Venezuelan courts nor the Venezuelan Executive ever recognized their existence in the present controversy, and it has been contended that they were withdrawn from the case by the company's attorney. Doctor Bance's statement of the manner and purpose for which they were introduced have already been set forth. It has been thought unnecessary, however, to reach any definite conclusion upon this point further than to establish that the existence of these titles, valid and unimpeached, was officially known both to the executive and judicial branches of the Government of Venezuela, and a more particular analysis of the proper procedure to adopt or to have been adopted in order to place them beyond the reach of casuistry has not been considered to be of controlling importance, in view of the fact that this is not thought to be the decisive question in the case. It may, however, be observed that the attorney-general suggested, during the proceedings in the main issue, that an opportunity would arrive for the company to present its land and mining titles, and that the proper time would be when the judgment of sequestration was about to be executed. (Report, pp. 102, 103.) This opportunity has never arrived; nor is it likely to arrive—for Venezuela is now secure, apparently, in the possession of the property and finds proceedings in execution to be, therefore, quite unnecessary.

But even admitting that the land and mining titles were not necessarily involved; that they were not introduced in evidence and not adjudicated in the judicial proceedings. What justification can the Government of Venezuela find for the seizure of the company's prop-

erty without previous notice to defendant to appear and answer, without any showing of any existing emergency which justified such hurried and stringent action? How does she justify the execution of the writ by armed force and the confiscation of property which can not under her own laws, it is submitted, be properly considered the subject of a so-called lease, and appropriate the same to the use of her own Government, and how can she, with any pretext of sincerity, appoint and retain in the position of receiver a person judicially known to her court to be hostile to the interests he is sworn to protect and preserve under his oath as receiver?

The property is still held under this sequestration in contravention of titles granted, for one of which, the title in fee simple, the Government received a cash consideration. The Government has never repudiated these titles or attempted to set them aside, and no court has adjudged them void. The Warner-Quinlan suit, in which it was sought to involve them, was a suit brought for the purpose of establishing the title to Felicidad. The sole question involved in that proceeding was whether or not that title was a good title, and no amount of proof that somebody else's titles were bad could possibly have the effect of establishing that the Felicidad title was good. Hence, there was no relation between the Felicidad suit and the incident of sequestration, so called.

To summarize this matter: The defendants presented the question of their land and mining titles to the court at the first opportunity; they repeated this pleading in argument to the court when the time arrived for argument. The court requested the minister of fomento for information concerning these land and mining titles. The information was supplied to the court by the ministry of fomento, showing the existence and validity of these land and mining titles, and the court absolutely ignored them in its decision of the case.

During the pendency of the judicial proceedings, on September 26, 1904, this Department wrote an instruction to our chargé d'affaires at Caracas, Mr. Hutchinson (pp. 174–176, supra), laying special emphasis upon the land and mining titles and the fact of their valid existence unimpeached, and directed our representative to lay the facts of the case before the Venezuelan minister for foreign affairs and ask for the discharge of the receiver, in view of the circumstances set forth. Mr. Hutchinson, in obeying this instruction, took up the entire case with Mr. Sanabria, the minister for foreign affairs, and the reply he received was to the effect that this Government had no right to interfere in the case. Here was a direct presentation of the vital question to the Venezuelan Executive who was prosecuting the suit, and it received the same reception that it had received from the judicial authorities.

The present situation, therefore, is that the company has been permanently dispossessed of the asphalt lake by virtue of the sequestration proceedings; that if the complainant's title to the lake depended solely upon the Hamilton contract no exception, perhaps, might be made to such action; but that the company had other valid titles to the property which have been consistently ignored, which have never been passed upon or adjudicated by a court; notwithstanding these titles and their validity, the Government insists upon retaining possession of its property under unjust and indefensible

aside or questioning the validity of these titles; so that, while levying, perhaps properly, against the Hamilton concession, Venezuela is proceeding tortiously as against the Bermudez or mining concession. In taking and keeping possession of the company's property and occupying and using its railroad, warehouses, refineries, docks, wharves, and other appurtenances, under the circumstances as above set forth, Venezuela is committing a grievous and indefensible tort, for which she should be compelled to answer.

2. *The main issue.*

The next and last series of judicial proceedings upon which some comment should be made is the "main issue."

Under these proceedings the attorney-general asked for and obtained the annulment of the concession and an award of damages for its breach. The two questions will be dealt with separately.

Annulment of the Hamilton concession.—The decree of annulment was, it is considered, justly made on the ground that the company had failed in its obligation to develop the timber lands, and Article IX of the concession stipulated that the contract should be forfeited upon failure to observe any of its conditions. It would seem that no exception can be taken to this ruling. There seems to be one strong argument which might have been used at the trial which might have influenced the question of forfeiture, and that is that the company had spent large sums of money in developing certain portions of the territory for a long period of years, and the State had been accepting, without remonstrance or complaint of the non-fulfillment of other conditions, the benefits of such expenditures in the way of taxes and other charges accruing therefrom, and was thereby estopped, after this long period of time, from alleging that the terms of the contract had not been complied with. (City of Atlanta *v.* Gate City Gas Light Co., 71 Ga., 106.) But no estoppel was pleaded by the company and no evidence introduced on that subject, and it is well settled that facts showing estoppel *in pais* must be pleaded and clearly made out by the party relying upon it. (Royal *v.* Aultman, 116 Ind., 424; Bailey *v.* Bond, 77 Fed. Rep., 403; American and Eng. Enc. Law, vol. 29, pp. 1105, 1106; Gray *v.* Blanchard, 8 Pick., 283; Cyc. of Law and Practice, vol. 9, p. 727; Cyc. Pleading and Practice, vol. 8, pp. 10, 11.) It would appear, therefore, that it is too late now for the company to avail itself of this pleading.

The assessment of damages.—The commission appointed by the court rendered an award for 1,065,000 bolivars as "damages" against the company accruing to the Government for breach of the contract. The attorney-general, in his petition praying for damages, asked that they be assessed in accordance with the basis established in the "first additional article." This article, it will be remembered, referred only to the rate of duty to be collected on such wood, dyestuffs, etc., as was exploited or exported. There is nothing to suggest a penalty in the article, and the appraisers, in arriving at their award, simply made a calculation of what they considered the yield of timber, etc., should have been if the concessionary had developed the contract as he might have done, and the rate of duty upon this speculative yield was awarded as the amount of "damage" sustained by the State. A cal-

culation of this character is almost too frivolous for serious argument. It is understood that the company has filed exceptions to this award, which are still pending.

Concerning the merits of the award the following observations are made: There is nothing in the evidence tending to show the extent of the forests in the State of Bermudez, or whether the wood had any commercial value. Nor is there anything in their report to show that the commissioners even went into the State of Bermudez for the purpose of making the assessment. They appear to have taken and examined Government reports of exports from other and remote parts of Venezuela, and from them made a guess as to what the exports would probably have been for the State of Bermudez for fifteen years, and calculated therefrom the revenue which the Government would have received.

Nothing further need be said to show that this assessment of damages is a travesty and a farce. It is not justified by any principle of law or by any rule of practice known to the courts of a civilized country, or by any principle of common sense or common justice.

Concerning the principle of damages, it would seem that the most correct measure which can be applied is that which was stipulated in the contract, i. e., forfeiture of the concession; and that an attempt to enforce the award of the appraisers, made on such a speculative basis as that which they have followed under the order of the court, would make only one more additional instance of a denial of justice in a case already teeming with them.

CONCLUSIONS.

JUSTICE OF THE CASE AND LIABILITY OF VENEZUELA.

It is submitted that the foregoing pages show that the property rights of the New York and Bermudez Company have been violated, in spite of the best efforts of the company to defend itself; that this result has been accomplished by gross misuse of judicial and executive authority, and that Venezuela should be held responsible therefor. The gravamen of the complaint is that the company went into Venezuela with a great capital, which it invested there, and as a result of procedure which has been a travesty upon justice is turned out of its property without a dollar; that its interests were made over to its business rivals, and that its mine, worth millions of dollars, which it has been working for years under valid and undisputed titles, has been wrenched from its possession by the violent hands of the Venezuelan Government under pretexts of legal process; that the irregularity of these proceedings has been brought time and again to the attention of the Venezuelan Government; that that Government, through its courts and its Executive, has persistently ignored the appeals both of the complainant and of this Department in its behalf; and that as a matter of fact the Venezuelan Government is itself the direct agent through which these wrongs are being perpetrated.

PROPOSED REMEDY.

Considerable thought has been devoted to the question of the remedy to be applied in this case. The conclusion reached is that

the nearest to a correct solution of the question would be upon the basis of restitution of the property, to be followed by arbitration, preferably by The Hague Tribunal, of the question of title.

In the arbitration Venezuela should agree to confirm the company's title in case an award should be made in its favor, and there should also be a provision covering damages by reason of the wrongful dispossession.

In other words, an arbitration of this controversy is recommended along the general lines of the protocol of 1905, which was drafted by the company's counsel, Prof. John B. Moore (copy attached hereto), with a clause providing for its submission to The Hague International Court.

In the arbitral agreement there should be some stipulation that the taxes, duties, or other charges now being paid to the Venezuelan Government in connection with the working of the property should not be unfairly increased during the term of the company's titles; otherwise, in case of a decision adverse to Venezuela, that Government would probably tax the company into insolvency.

But the proposal to arbitrate has once been rejected by Venezuela, and there seems to be not the least doubt from the diplomatic correspondence that another courteous request from this Department would meet with the same cavalier treatment. It seems, therefore, inadvisable to resubmit the claim through the ordinary channels and in the ordinary way if compliance with its terms be sought. Whether the submission should be made before or after consultation with the President or the Senate Committee on Foreign Relations, or both, is a question for the judgment of the Secretary. It would seem, however, that an impasse has been reached in this case which can not be resolved by ordinary peaceful methods.

PROTOCOL.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 12, 1905.

BOWEN, *Minister, Caracas.*

You are authorized to conclude following protocol Bermudez matter. Important insist upon immediate restoration of property. Cable results.

LOOMIS.

Protocol of agreement between the United States of America and the United States of Venezuela for the submission to arbitration of all questions between the Venezuelan Government and the New York and Bermudez Company, a corporation under the laws of the State of New York and a citizen of the United States.

Whereas differences have existed and still exist between the Venezuelan Government and the New York and Bermudez Company, especially in relation to the asphalt mine or deposit commonly called Bermudez Lake, in the State of Bermudez, in Venezuela; and

Whreas in July last, on process issued by the Federal and Cassation Court of Venezuela, at the suit of the Venezuelan Government, the said mine or deposit was, together with all its works and appurtenances, sequestrated and taken from the possession of the New York and Bermudez Company, against the protest of the Government of the United States, as well as of the company; and

Whereas it is desired, in the interest of justice and harmonious relations between the two countries, to put an end to all differences between the Venezuelan Government and the said company, at once and finally by means of an international arbitration;

Now, therefore, the United States of America and the United States of Venezuela, through their respective representatives, ——— ——— and ——— ———, have agreed upon the following articles:

ARTICLE I.

All differences heretofore or now existing between the Venezuelan Government and the New York and Bermudez Company, and all claims on either side arising therefrom, whether such claims have been diplomatically presented or not, shall be referred to, and shall be decided by, a board of three arbitrators, one to be named by the President of the United States, one by the President of Venezuela, and the third by the President of the United States and the President of Venezuela, jointly, within sixty days.

In case of the death, absence, or incapacity of any arbitrator, or in the event of his ceasing or omitting to act, the vacancy shall be filled in the same manner as the original appointment, the period of sixty days to be calculated from the date of the happening of the vacancy.

ARTICLE II.

The arbitrators shall meet in the city of Washington within sixty days after the date of the appointment of the third arbitrator.

The vote of two arbitrators shall suffice for the decision of all questions submitted to the tribunal, including the final award.

ARTICLE III.

Within six months after the signature of this protocol each party shall present to the other and to its agent, and also to each of the arbitrators, two printed copies of its case, accompanied with the documents and evidence on which it relies, together with the affidavits of their respective witnesses.

Within a further period of four months either party may, in like manner, present a counter case, with additional documents and evidence and affidavits, in reply to the case, documents, and evidence of the other party.

If either party shall, in its case or counter case, refer to any document in its exclusive possession, without annexing a copy, it shall, upon request of the other party, furnish the latter with a copy; and either party may call upon the other, through the arbitrators, to produce the originals or certified copies of any papers adduced as evidence.

ARTICLE IV.

Within four months after the expiration of the term allowed for the filing of counter cases, each Government may, by its agent, as well as by additional counsel, argue its cause before the arbitrators, both orally and in writing. Each side shall furnish to the other copies of any written arguments, and each party shall be at liberty to make a written reply, provided that such reply be submitted within the four months specified.

ARTICLE V.

All proceedings, whether judicial or administrative, pending against the New York and Bermudez Company, at the suit of the Venezuelan Government, shall be immediately discontinued, and the award rendered under the present protocol shall be accepted as a conclusive determination of all questions involved in said proceedings and of any and all rights of said company in Venezuela, under its concessions and deeds, or otherwise, including indemnity for any violation of said rights.

The company shall be immediately restored to the possession and enjoyment of Bermudez Lake, its works and appurtenances, as fully as before the late sequestration, and shall be permitted to remain in such possession and enjoyment, subject only to the decision of the arbitrators, and the Venezuelan Government shall, so far as possible, restore to the company all asphalt and other property taken from it at and since the order of sequestration, and shall give all

aid to the company in tracing and recovering all such asphalt and other property as may have passed out of said Government's immediate control.

ARTICLE VI.

The New York and Bermudez Company shall be permitted freely to seek and to obtain the testimony of witnesses, through agents of its own selection, whether Venezuelans or foreigners, in any part of Venezuela. Such agents shall not be obstructed, threatened, or harassed; nor shall any person be hindered or deterred from giving testimony in behalf of the company, or be made in any way to suffer by reason of having given such testimony. The company shall also be permitted freely to communicate by cable, as well as by other means, with its representatives and agents in Venezuela.

ARTICLE VII.

The award of the tribunal shall be rendered within fifteen months from the date of the signature of the present protocol. It shall be in writing and shall be final and conclusive.

ARTICLE VIII.

Reasonable compensation to the arbitrators for their services and all expenses incident to the arbitration, including the cost of such clerical aid as may be necessary, shall be paid by the two Governments in equal moieties.

Done in quadruple, in English and Spanish, at ———, this —— day of ———, 1905.

APPENDIX
TO THE CASE OF THE NEW YORK AND BERMUDEZ COMPANY AGAINST THE GOVERNMENT OF VENEZUELA.

REPORT OF HON. WILLIAM J. CALHOUN, SPECIAL COMMISSIONER.

WASHINGTON, D. C., *January 29, 1906.*

SIR: At the request of the President, and under your direction, I went to Venezuela in the month of August, 1905, for the purpose of investigating the complications in which the interests of the New York and Bermudez Company were involved, and which had been the subject of diplomatic negotiations between the Government of the United States and the Government of Venezuela. I gave the records of the departments and of the courts which relate to this controversy careful study, and I herewith submit my report. I have endeavored to impartially note the different phases of the questions in issue, both for and against both parties, i. e., the New York and Bermudez Company and the Government of Venezuela.

I was courteously received by the officers of the Venezuelan Government, and every facility for investigation was afforded. I am specially indebted to General Ybarra, minister of foreign relations, Dr. Lucio Baldo, minister of fomento, and Dr. F. Arroyo Parejo, attorney-general, for many courtesies extended.

Respectfully submitted.

WILLIAM J. CALHOUN,
Special Commissioner.

The SECRETARY OF STATE,
Washington, D. C.

STATEMENT OF FACTS.

HAMILTON CONTRACT.

On or about September 15, 1883, one Horatio R. Hamilton, a citizen of the United States, through the favor of Gen. Guzman Blanco, then President of Venezuela, obtained from the Government a concession or contract for the exclusive exploitation of asphalt and the natural products of the forests on the wild or public lands in the State of Bermudez. This contract was executed in behalf of the Government by the minister of fomento; it bears date the day and year aforesaid and is as follows:

The minister of fomento (of public improvements) of the Republic by order and authority of the President, party of the first part, and Mr. Horatio R. Hamilton, party of the second part, have entered into the contract expressed in the following clauses:

ARTICLE I. The Government grants Mr. Horatio R. Hamilton the right to explore and exploit the natural products of the forests existing in the unculti-

vated lands of the State of Bermudez and to take from thence woods for building purposes, cabinetmaking, and all such woods as can be utilized by industry; and the resins, plants, and herbs which are used—aromatic, essential, or medicinal and for dyeing purposes.

The section of Barcelona is excluded, so far as the exploiting of its woods is concerned.

ART. II. The Government grants also to Mr. Horatio R. Hamilton the right to exploit the asphaltum in the said State of Bermudez.

ART. III. Mr. Horatio R. Hamilton is entitled to import, free of customs duties, such machinery, implements, and tools as may be required in the exploiting of the products above mentioned, in the State of Bermudez. With each importation he will obtain the corresponding order for exemption from duties by presenting, on soliciting it, an invoice of what he has to import and by complying, in the respective custom-house, with the requirements of the law to such end.

ART. IV. The Government grants Mr. Horatio R. Hamilton the right to navigate by small steamers on the channels and navigable rivers of the State of Bermudez and the right to take from the forests on waste lands the wood necessary for fuel.

ART. V. Mr. Horatio R. Hamilton is under the obligation to pay to the public treasury two bolivars for every nine hundred and ninety-nine and a half kilograms of asphaltum which he exports and five centimes of a bolivar for each kilogram of any of the natural products above mentioned, except the wood, presenting in each case at the collector's office in which the payments may be made a manifest that vouches for the number of kilograms to be exported.

The duty to be paid on the wood will be fixed afterwards by an additional clause to this contract.

ART. VI. If the products to which this contract refers are sold in the country, Mr. Horatio R. Hamilton will pay the same taxes expressed in the preceding article, and, should the case arise, that (tax) which may be imposed upon the wood.

ART. VII. The Government will not impose any other tax upon the products exploited by Mr. Horatio R. Hamilton, nor, in accordance with the constitution and laws, will the States and municipalities have power to impose any other taxes.

ART. VIII. The term of this contract will be for twenty-five years, counting from this date, and during that period the Government will not grant any, similar concessions for the State of Bermudez to any other person.

ART. IX. Horatio R. Hamilton binds himself to begin to perform the work of the present contract within the term of six months, which (term) may be prolonged for six more months, according to the judgment of the Government counting from the date which it has been approved by the Federal Council, in accordance with the law on this matter; and, in case of nonfulfillment of any of the stipulations expressed, this will annul the present contract ipso facto.

ART. X. Horatio R. Hamilton has a right to transfer the rights and obligations derived from this contract to any other party or parties, advising beforehand the Federal Executive.

ART. XI. The doubts and controversies that may arise under this contract shall be settled (or resolved) by the courts of the Republic in accordance with its laws.

Two originals made to the same effect in Caracas, on the fifteenth of September, eighteen hundred and eighty-three.

[L. S.] M. CARABANO.
HORATIO R. HAMILTON.

FIRST ADDITIONAL ARTICLE.

On October 19, 1883, an additional article was entered into, as follows:

According to the provision made in Article V, this present article fixes the duties which Mr. Horatio R. Hamilton shall pay for the wood he may exploit or export, thus: For every nine hundred and ninety-nine and a half kilograms of dyewoods, three bolivars; and for every nine hundred and ninety-nine and a half kilograms of building woods, two bolivars fifty centimes.

Caracas, October nineteenth, eighteen hundred and eighty-three.

[L. S.] M. CARABANO.
HORATIO R. HAMILTON.

Approval of Congress.—On June 5, 1884, the original contract and the foregoing additional article were aproved by the Federal Congress; and on the 6th day of June, 1884, this action of Congress was approved by President Crespo, and the contract, with the one additional article and a certificate of the approval of Congress, were published in the Official Gazette, of date July 21, 1884, No. 3300, and thereby had the declared force and effect of a public law.

SECOND ADDITIONAL ARTICLE.

Prior to the foregoing approval of Congress, and on the 30th day of May, 1884, Hamilton and the minister of fomento entered into what is called a "second additional article" to the contract, which was as follows:

Hamilton binds himself to channel, for exportation and importation, one or more of the rivers of the State of Bermudez, beginning with Cano Colorado and Guarapiche, as far as Maturin. The Government grants him the exclusive right of navigation on the rivers that he may channel, collecting a tax that will be fixed by agreement with the Government, upon the ships or boats which may navigate therein, as soon as the rivers shall be channeled.

He will have the same rights in case of his constructing a railroad.

This second "additional article" is one of the principal elements of the present controversy between the Government of Venezuela and the Bermudez Company. It is conceded that this article, though apparently executed May 30, 1884, was not attached to the contract on June 5, 1884, when the latter and the first additional article were ratified and approved by Congress.

Publication in Official Gazette.—The contract, with all the additional articles, including that of May 30, 1884, was first published in Official Gazette No. 3258, May 30, 1884. But the original contract, with the first additional article only, and a certificate attached showing the ratification of Congress and the approval of President Crespo, were published in Official Gazette No. 3300, July 21, 1884.

Extension of time.—Hamilton applied for and was granted several extensions of the six months' period, in which he was to begin work. The last one was granted October 30, 1885, in consideration of the payment by Hamilton of 2,000 bolivars, which amount he paid as evidenced by the receipt of the minister of fomento. This extension was interpreted to run until April 30, 1886.

Promotion by Hamilton.—Having secured this concession, Hamilton is said to have made extensive explorations in the territory specfied, to have collected specimens of various natural products, samples of different woods, which he thought might have commercial value, and of various minerals, including asphalt. He took these specimens to New York and exhibited them there in rooms secured for that purpose. He published reports of his explorations, and by publications in the newspapers and by personal solicitations he attracted attention to the importance of the concession.

INCORPORATION OF THE NEW YORK AND BERMUDEZ COMPANY.

As the result of his effort, on October 24, 1885, the New York and Bermudez Company was incorporated under the laws of New York by Ambrose H. Carner, Thomas H. Thomas, and William H. Thomas.

Its capital stock was fixed at $1,000,000, divided into 10,000 shares of $100 each. The objects of the corporation are stated to be the manufacture of railroad ties, lumber, and other wood products; the mining of asphalt, minerals, and mineral oils; the cultivation of sugar cane, cotton, rice, tobacco, indigo, dyewoods, and other products of the earth, preparing the same for market and disposing thereof; constructing and using vessels for carrying passengers and freight, for towing and aiding vessels in distress, saving cargoes, etc., and buying, breeding, and dealing in cattle and other live stock, in the State of Bermudez, Republic of Venezuela, and elsewhere.

Contract assigned to Bermudez Company.—On November 16, 1885, Hamilton assigned the contract to the New York and Bermudez Company (hereinafter called the Bermudez Company), and on December 9, 1885, the assignment was approved by the Venezuelan Government.

It may be here noted that this assignment not only included the original concessions, but "each and every additional article thereto." The expression "additional articles" is used several times in the assignment, and always in the plural, showing it was then understood by both parties there was more than one additional article, the rights and obligations of which were assigned to and assumed by the company.

Commencement of work.—Immediately following the assignment the company apparently commenced the performance of the contract in all its branches by cutting wood, making preparations for mining asphalt, and canalizing rivers. These facts are evidenced by various reports made from time to time by the officers of the company to the minister of fomento up to and including the first half of the year 1887, after which no reports were made, and, so far as I can discover, no further effort was made to canalize rivers. To these several reports I will hereafter refer.

Carner becomes managing director.—In the beginning of the company's work Hamilton was the managing director. He was succeeded in 1887 by Ambrose H. Carner, who was one of the incorporators of the company, and from then until the present time has been the most prominent actor in its somewhat dramatic history—for many years its active and energetic defender, now its most hated and feared opponent.

Abandonment of timber exploitation.—It is evident that soon after the advent of Carner the exploitation of timber and the natural products of the forests was abandoned, and thereafter the company limited its efforts to the exploitation of asphalt. The principal deposit of asphalt within the territory covered by the concession is called a lake, situated in the municipality of Union, district of Benitez, section of Cumana, State of Bermudez. This deposit covers about 1,000 acres, mostly bare of vegetation, surrounded by dense, swampy forests and an almost impenetrable tropical jungle. It is located about 11 kilometers ($6\frac{7}{8}$ miles) on a direct line southeast of the village of Guariquen. It is said the deposit is a continuous one, with well-defined, though irregular, boundaries, easily identified.

BERMUDEZ COMPANY'S MINING TITLE.

Appreciating the present or the future value of this asphalt deposit, and taking into consideration that the company's right under the

Hamilton concession was limited to a period of twenty-five years from September 15, 1883, Carner, for the purpose of extending the company's right for the period of ninety-nine years and otherwise strengthening its title, commenced proceedings to acquire a mining title to the deposit under the mining laws of the country. Such a title would be not only independent of the Hamilton concession, but would extend far beyond the term thereby prescribed.

Only brief reference is now made to the constitutional provisions relating to mines and to the code of mines, under which the mining titles were then established. The constitutional provisions, the legislative and the executive regulations comprising the law of mines are most particularly set forth in the record herewith filed.

At the time Mr. Carner set in motion the proceedings to acquire the land and mining titles there is a question as to what constitution, if any, was then in force. The change of scenes on the political stage of Venezuela is so rapid and the constitutional situation is so kaleidoscopic that it is hard to tell when a constitution or what constitution is recognized as the fundamental law of the land.

Gen. Guzman Blanco led a successful revolution in 1879. A congress of delegates from the several States assembled, and on May 6, 1879, declared the constitution of 1874, and the laws enacted thereunder, subject to certain limitations, still in force.

Constitution of 1881.—On April 27, 1881, a Federal Congress promulgated a new constitution, wherein it was declared the constitution of 1874 was repealed; or that the constitutional period created by the last-named instrument would expire on February 20, 1882, when a new constitutional period, under the new constitution, would begin.

Title to mines vested in the States.—It seems to be conceded that, under the constitution and the laws of the country, the title to mines, wild lands, and salt pits is vested in the respective States.

This fact was recognized by the constitution of 1881, Title II, article 13, section 14, whereby the several States bound themselves—

> To recognize the right of each State to dispose of its natural products.

This right as to mines was further recognized by an act of Congress of May 30, 1887, wherein it was declared:

> ARTICLE 1. All mines in the Republic are the property of the State in which they are situated, etc.

But, by the constitution of 1881, Title II, article 13, section 15, the States also bound themselves—

> To grant to the Government of the Federation the administration of mines, wild lands, and salt pits, in order that the mines may be subject to a uniform system of exploitation and that the wild lands and salt pits may be applied to the benefit of settled regions.

Title V, article 66, of the same constitution provides:

> Apart from the foregoing powers, which are peculiar to the President of the United States of Venezuela, he shall, with the deliberative vote of the federal council, exercise the following: * * *
>
> (2) Administer the wild lands, mines, and salt pits of the States as their representative.

In the act of Congress, May 30, 1887, quoted above, after declaring the property of mines to be in the States in which the same may be respectively located, the article above referred to goes on to say:

And their (the mines) management is within the province of the Federal Executive, who shall direct a uniform system of exploitation, in conformity with the provisions of section 15 of the thirteenth article of the Federal Constitution. * * *

ARTICLE 5. The Federal Executive is authorized to enact the reglamentary decree of the present law.

ARTICLE 6. The mining law of May 23, 1885, and all other laws and enactments inconsistent with the present law are hereby repealed.

LAW OF MINES.

Executive decree, August 3, 1887.—On August 3, 1887, President Blanco, in the exercise of the authority given him by article 5 of the above-mentioned act of Congress, issued a decree prescribing the law of mines. All through the proceedings instituted and carried on by Mr. Carner to acquire title to the mine this decree is recognized and referred to as the law authorizing the procedure.

This law, in brief, provided that any person who discovered a mine should file a written notice with the President of the State, describing the discovery (art. 23). The President then appointed two experts, who, with the inspector of mines, verified the discovery and made a written report concerning the same (art. 24). Upon the receipt of this report the President of the State gave the discoverer what is called a provisional deed (art. 25), which was good for two years; a definitive or final deed was good for ninety-nine years (art. 6). The provisional deed conferred upon the grantee, if the mine was located on wild lands, the exclusive ownership of the vein or mineral bed, and also a preferential right to the ownership of such part of the wild lands as he might need for wood, water, and other necessities in the operation of the mine (art. 26). The President of the State was then to forward a report of the proceedings and a copy of the provisional deed to the President of the Republic (art. 29). Application was then to be made to the last-named President for a definitive or final deed.

If the mine was located on wild lands and the applicant desired title to a part thereof to be used in connection with the mine, he must also comply with the law applicable to wild lands (art. 31). The preliminary proceedings being regular, the President of the Republic issued a definitive deed for the mine (art. 30). The definitive deed granted nothing but the mine. Even if the grantee owned the surface on which the mine was located the mine constituted a property separate and distinct from the land, and it alone was covered by the deed (art. 7). And in case of a mining location on wild lands the definitive deed granted nothing beyond the exploitable substance. The grantee must purchase from the nation, in conformity to the wild-land laws, such land as he might need in his mining operations (art. 10). Mining properties should be clearly marked by footpaths, and with posts at all projecting or retreating angles of their boundaries (art. 13). The minister of fomento was charged with the execution of the law (art. 56).

LAW OF WILD LANDS.

On June 2, 1882, the Federal Congress passed what were declared to be the wild-land laws. Wild lands were defined to be such as had no legitimate owner, or did not belong to villages, corporations, or private owners (art. 1). Wild lands belonged to the States of the Union (art. 2). They should be administered upon by the Federal Government, as provided in section 15, article 13, of the Federal Constitution (art. 4).

These lands should be devoted to agricultural or mining enterprises, for the development of the resources of the country; the creation of territories for the exploitation of natural products, such as rubber, bark, etc.; the protection and civilization of the natives; the encouragement of emigration; to assist railroad enterprises, and for cattle raising and other industries. For these several purposes the Executive, after receiving the consent of the respective States, might grant deeds for such lands to persons who petitioned for the same, in conformity to law (art. 4).

The President, in disposing of such lands, was empowered to give assurances of title and property to the purchaser and his assigns (art. 5).

Lands for the exploitation of mines should be conveyed in accordance with the code of mines, and for the exploitation of natural products the disposition of lands were to be governed by special Executive decrees (art. 6).

In the sale of wild lands to private individuals, the use to which the lands were to be devoted must be specified. And the condition must be irrevocably fixed that neither the nation nor the State should be responsible for eviction, nor for warranty, nor be obliged to put the purchaser in possession by any determined boundaries (art. 7).

Petitions for the purchase of lands should be presented to the president of the State wherein they were located (art. 8). The purchaser should pay the expense of a survey, which should be made by a surveyor appointed and sworn by the president aforesaid (art. 10). The surveyor should draw a topographical plan, showing the location, extent, and limits of the land and other circumstances peculiar thereto, which might assist in determining the value of the land and the uses to which the same were adapted (art. 11).

The value of the land should then be ascertained by two experts appointed by the State to appraise the same (art. 12). The purchase price should be the appraisement so made and should be paid in cash or in bonds of the consolidated debt at their market value (art. 16).

The petition for the purchase should be published in some official publication. These preliminary proceedings being concluded, and no opposition appearing, the president of the State, with the consent of the administrative council, should send the record to the President of the Republic, with a report as to the advisability of selling the land (art. 13). A form of a deed for the conveyance of wild land was given, which assured ownership of property to the purchaser (art. 17).

Bermudez Company's mining title.—As before stated, some time in the year 1888, Mr. Carner, then secretary of the Bermudez Company,

commenced proceedings under the aforesaid executive decree of August 3, 1887, to obtain a mining title to the asphalt deposit.

The first document found in the records of the minister of fomento, as a part of this title, is a decree of the president of the State of Bermudez, dated October 22, 1888, granting to A. H. Carner a provisional title to an asphalt mine, which he had denounced as discovered by him, and which is said to be situated in the jurisdiction of Parish Union, village of Guariquen, section of Cumana, State of Bermudez.

Provisional deed, October 22, 1888.—The decree recited that "Mr. A. H. Carner, secretary of the New York and Bermudez Company, had fulfilled all the formalities prescribed by the decree of August 3, 1887;" that the technical inspector of mines, Señor J. Orsi de Mombello, had made a favorable report, wherein he stated he made a long visit to the mine, and that it was situated

> At a distance of 20 kilometers to the southeast of the village of Guariquen, and 180 meters above the level of the sea;

and that it was a vast surface, of a circular shape, all in swampy lands, over which were found large deposits of asphalt.

The decree "grants the provisory title of property for two years to the said Mr. A. H. Carner; granting him at the same time the authorization he needs for applying for the definitive title, and to exploit in his own interest the newly discovered asphalt deposit."

Petition of A. H. Carner for definitive title.—On the same day the president of the State transmitted the record of the foregoing decree to the minister of fomento. On November 6, 1888, Mr. Carner, secretary of the Bermudez Company, etc., petitioned the minister of fomento, reciting the grant of the provisional title, and asked the minister "to grant me the definite title to said mines."

On November 20, 1888, the director of territorial riches—a department in the ministry of fomento—reported that the formalities of the law had been complied with and the petition could be granted.

Resolution of Federal Council granting title.—On December 5, 1888, the President of the Republic and the Federal Council resolved "that the definitive title of property to the said asphalt mine be granted for ninety-nine years in favor of Mr. A. H. Carner, secretary of the New York and Bermudez Company."

Definitive title, December 7, 1888.—On December 7, 1888, the President of the Republic executed a definitive deed wherein it is recited that Mr. A. H. Carner, secretary, etc., had asked the Government to give him the definitive title of property to an asphalt mine, which he had denounced before the president of the State of Bermudez, which mine is situated "in the jurisdiction of the parish of Union, village of Guariquen, section of Cumana, of the State of Bermudez, at a distance of 20 kilometers to the southeast of the said village of Guariquen, and at 180 meters above the level of the sea."

This deed granted to "Mr. A. H. Carner, secretary of the New York and Bermudez Company, the property of the said mine in all the extensions that correspond to it, and with respect to all the asphalt deposits comprised in the same," giving the holder thereof and his successors the right of exploitation for ninety-nine years.

Wild-land title.—Concurrently with the proceedings to acquire the mining title, Carner also commenced proceedings to acquire a title to a large body of wild lands surrounding and including the asphalt lake.

Carner's petition to State authorities.—The record shows that on the 8th day of October, 1888, Mr. Carner petitioned the president of the State of Bermudez, and in the petition he stated he was the secretary of the Bermudez Company, a corporation organized under the laws of New York; that it was the assignee of the Hamilton contract; that it was actively engaged in the work of exploitation under that contract; that the company had taken the necessary steps to acquire a provisional title to certain asphalt mines situate in the State of Bermudez, "on a road constructed by the company toward the southeast for a distance of 20 kilometers from Guariquen, up to a house belonging to the company and situate on this road, over a little hill before getting to a wooden bridge which leads to the surface of the asphalt deposit, and the boundaries of which are by the north, south, east, and west, mangrove trees and swamps;" and in accordance with the decree on wild lands of May 24, 1882, and article 10 of the mining law of August 3, 1887, he applied for a title to the "wild lands that comprise the mines already mentioned, for the use of exploitation work."

Order on the petition.—On the same day the president of the State made an order reciting the petition; directing that publication thereof be made in an official newspaper; ordering J. Orsi de Mombello to make a survey and plat, and that the order be published, etc.

Report of surveyor.—On October 23, 1888, Mombello, the surveyor, reported to the president of the State, inclosing "the topographical plan of the lands, which are situate at a height of 180 meters above sea level, and the climate of which is generally healthy," etc.

Appraisal of value of lands.—Appraisers were appointed to appraise the value of the land, and on October 23, 1888, they reported to the president of the State that, as the land in question was swampy and unfit for raising cattle or for agricultural purposes, they had appraised the value thereof at 3,792 bolivars, which was at the rate of 79 centesimals of a bolivar per hectare, or 2,000 bolivars per square league.

Approval of State authorities.—On the same day the State authorities, by resolution, declared the formalities of the law had been complied with, that the proposed purchase was approved by the State, and that the record should be sent to the national executive for the final adjudication of the title.

Report of director of territorial riches.—On November 20, 1888, the director of territorial riches made a report, presumably to the minister of fomento, in which he said the State authorities had forwarded the record pertaining to the application, with their approval; that it was a "denunciation" made by Mr. Carner, secretary of the Bermudez Company, "in the name and in behalf of said company," of certain wild lands in the State of Bermudez; that "these lands are acquired by the petitioner in the name of the said company for the distinct purposes of the exploitation of an asphalt mine which it possessed in the same lands, in conformity to articles 10 and 26 of the decree that regulates the mining law now in force."

He further said that all the formalities of law had been complied with, and that the title of the property might be granted to the Bermudez Company if the appraised value was paid.

Report of minister of fomento.—On December 11, 1888, the minister of fomento reported the application to the Federal Council, in which report he stated the amount of the land to be 1.54 leagues; that the requirements of the law relating to wild land and mines had been fulfilled; that the land was to be used in the exploitation of an asphalt mine located thereon, and that the title should be granted.

Payment of appraised valuation.—On December 14, 1888, the treasurer gave a receipt acknowledging the payment by Mr. Carner of 1,403 bolivars and 5 centimes in cash, equivalent to 3,792 bolivars in bonds of the national consolidated debt, for value of the land.

The law required the appraised value to be paid in cash or in bonds of the national consolidated debt at their market value. (Art. 15, Law of Wild Lands.) In this instance the parties seem to have estimated the market value of bonds to the amount of 3,792 bolivars, face value, and paid that amount in cash, thereby discounting the appraised value from 3,792 bolivars to 1,403 bolivars, and the query is suggested whether or not this was full payment.

Order of President and Federal Council granting title.—On December 14, 1888, the President, with the consent of the Federal Council, ordered that a final deed be granted for the land in question.

Deed to the lands, December 14, 1888.—On the same day the minister of fomento, for and in the name of the Government of Venezuela, executed a deed in final adjudication of the title to the land in favor of the New York and Bermudez Company. The property is described as one and fifty-four hundredths of a square league, which formed the surface of an asphalt mine that the company owns and which land was acquired for use in the exploitation of said mine, the land being situate "in the parish Union, district of Benitez, section of Cumana, of the State of Bermudez, and whose boundaries are, by the north, south, east, and west, lands covered by thick groves of mangrove trees, and swampy lands."

The consideration named is 1,403 bolivars and 5 centimes in cash, the equivalent of 3,792 bolivars in bonds of the national consolidated debt. "The dominion and property of the said lands is henceforth transferred in favor of the New York and Bermudez Company," with the declarations applicable expressed in articles 6, 7, and 8 of the laws of June 2, 1882, which authorizes the grant, the terms of which are to be considered a part of the deed.

Assignment by Carner and wife to Bermudez Company of mining title.—It will be observed that in the mining title the proceedings were conducted in the name of A. H. Carner, and the definitive deed vested the title to the mine in him. It is true he was described as the secretary of the company, but the words secretary, etc., may be said to be merely descriptio personæ and do not affect the investment of the legal title. It is apparent that both the company and Mr. Carner desired to avoid any such possible construction, and on August 1, 1893, Carner and wife executed a conveyance to the company, thereby transferring to the latter the definitive title to the mine.

The company, therefore, asserts the right to exploit the asphalt lake for the term of twenty-five years from September 15, 1883, under the Hamilton contract; and the right to exploit the same for ninety-nine years from December 14, 1888, under the mining title; and claims the fee-simple title to one and fifty-four hundredths square leagues of land surrounding and including the lake, under the wild-land title.

The proceedings to establish the mine and land titles have been specified with considerable detail, because, by reason of alleged defects therein, there subsequently arose a most bitter, protracted, and expensive litigation, wherein the company's right to practically the entire lake was challenged and well-night lost. Reference to this litigation will be hereafter made.

The company's right to exploit the asphalt accrued to it under the Hamilton contract November 16, 1885, the date of the assignment by Hamilton. But it seems to have done little or nothing in the way of mining asphalt for some years thereafter.

The representatives of the company filed a statement with the Department of State, entitled "A statement of the wrongs done to the company," in which they review the history of the company and its transactions in Venezuela. In this statement, page 9, they say:

> The appreciable shipment of asphalt by the company began in 1891 with 250 tons. The quantity was increased in 1892 to 1,130 tons, in 1893 to 1,743 tons, in 1894 to 7,038 tons. It fell in 1895 to 3,025 tons, but rose in 1896 to 5,654 tons, and preparations had been made for a much greater output, which reached, in 1897, the amount of 11,790 tons, when the company suddenly found itself obliged to meet a glaring and unscrupulous attack upon its clear and previously undisputed rights.

It is necessary that this attack be inquired into, because the company alleges that after its business became fairly prosperous it excited the cupidity of others; it became the subject of hostile intrigue and conspiracies, and a propaganda against it was organized, in which members of the Government of Venezuela, at times under cover, at times openly, participated; and that these conspiracies have continued through all the subsequent years, until their final consummation in the unjustifiable seizures of the company's property by the Government on July 28, 1904, as an incident to the latter's suit against the company.

THE "FELICIDAD" CLAIM.

The first attack above referred to is evidenced by the following facts: On January 28, 1897, four Venezuelans, named Antonio Cervoni, Mateo Guerra Marcano, Antonio Bianchi, and Jose Francisco Michelo (who are hereinafter referred to as Antonio Cervoni et al.), residents of Guariquen, in the immediate neighborhood of the asphalt lake, filed with the local magistrate of the parish of Union, in which the asphalt lake is located, a claim that they had discovered a mine, whereof they represented samples "which appear to contain asphalt." The magistrate aforesaid made an entry of the claim, wherein it was stated the samples were taken from wild lands, free, open, and uncultivated, lying on the Gulf of Paria. The location is more specifically, yet vaguely, described as follows:

> At the east of the place known as Usirina, near the stream known under the name of "El Majagual," and surrounded on all sides by wild lands and covering 300 hectares, for which the claimants file an option, etc., * * * to which claim the name "Felicidad" is given.

New mining law, March 29, 1903.—Between the time that Carner acquired his mining title and the time that Cervoni et al. applied for their title to "Felicidad" the mining law had been changed by an executive decree of President Crespo, March 29, 1893, and under this later law the mine and necessary land were acquired in the one proceeding. The procedure was made somewhat more complicated and more extended in detail than by the former law.

Provisional title to Felicidad.—On June 22, 1897, the president of the State granted Cervoni et al. a provisional title for two years, and provisional possession was also given them. The latter is a pro forma proceeding, not known to the former law, wherein a local magistrate, attended by witnesses and the claimants, goes to the premises and declares that possession is given to the provisional owner.

Survey of Felicidad.—On September 12, 1897, Pedro Vicente Felce, a public surveyor, made an extended report of a survey of "Felicidad." As a starting point for his survey he said he "took one of the posts which mark the mining concessions, set up at the corner of a place called the 'lake,' and marked on the map with the letter A," and from there he ran a line to the several corners of the claim; the dimensions and directions of the lines were stated; all of which corners, he said, were marked with posts of hard wood, 70 centimeters in circumference, with the initials of the owners marked thereon.

It is to be observed that the surveyor in this case did not locate or definitely establish the first corner by any landmarks or other definite location; it was altogether an arbitrary or artificial starting point, not capable of any identification or location beyond the fact that he commenced at a post set up at some corner of a place called the "lake."

It appears that no basic governmental surveys have ever been made in that country. The surveys are generally vague, indefinite, and uncertain as to boundaries or starting points. The best evidence of location is possession.

To the foregoing description the surveyor adds the following: The Felicidad mine had 283 hectares of area, with asphalt deposits on a surface of an area of 70 hectares, and "it is situated on the Gulf of Paria (it is several miles from that gulf), and to the east of the place known as Usirina, near the stream known under the name of El Majagual, in the jurisdiction of the municipality of Union," etc., "about 10 kilometers from the village of Guariquen, surrounded on its four sides by wild lands, free and open, and having a swamp on the south side of the bed of said mine."

Definitive title, November 30, 1897.—Further proceedings were had, until on November 30, 1897, President Crespo granted Cervoni et al. a definitive title for the mine "Felicidad," giving the grantees the right to use and enjoy the same for an indefinite time, subject to the law of mines.

It is said that the leader in this attempt to establish title to a part of the lake was Marcano, a lawyer and a politician of some prominence; that he proceeded secretly, and the company knew nothing of what he was doing until he had secured the definitive deed for himself and his associates.

It is evident he had studied the record of the Bermudez Company's land and mining titles; that he discovered a manifest error therein,

from the fact that by all the petitions, surveys, orders, and deeds the property was located 20 kilometers from Guariquen, and 180 meters above the level of the sea; while the facts are the lake is located only 10 kilometers from Guariquen, and the elevation above the sea is only 4 or 5 meters. He and his associates proceeded to take advantage of this mistake. They went onto the lake, and, as I understand it, located their claim on the east or northeast side. They staked it off, marked the corners with posts, then had it surveyed, gave it the distinctive name "Felicidad," and took the necessary steps to secure a title. The record of their title showed this location to be only 10 kilometers from Guariquen, which, they claimed, described a different property from that named in the deeds and surveys of the Bermudez Company.

But they evidently regarded the Hamilton contract as a bar to their operations or, at least, a cloud on their title. If that cloud could be removed, they felt free to contest with the Bermudez Company as to the priority or validity of the conflicting land and mining titles. Accordingly they made a direct attack on the Hamilton contract.

Petition for annulment of the Hamilton contract.—On January 3, 1898, their agent and attorney, Doctor Ayala, filed a petition with the minister of fomento asking for the annulment of the Hamilton concession.

In this petition, after reciting the terms of the contract, particular attention was called to the second additional article of May 30, 1884, wherein Hamilton agreed to canalize one or more rivers in the State of Bermudez, beginning with the Guarapiche; and it was averred that, in order to perform the contract, the work of canalization should have been commenced within the time specified and so continued that at the end of the twenty-five years the work would have been fully completed.

But, it was averred, ten years had passed and no effort had been made by the company to commence this work. A default, therefore, in the performance of one of the important obligations of the contract existed; and, by the terms of the contract, a default in the performance of any of the stipulations therein contained at once annulled the entire contract; wherefore the petitioner prayed for an order annulling the same.

EXECUTIVE DECREE CANCELING HAMILTON CONTRACT.

On the next day, January 4, 1898, without notice to the company, President Crespo, through the minister of fomento, issued an executive decree canceling the Hamilton contract. It is to be observed this decree ignored the complaint of Doctor Ayala that the company was in default because of its failure to canalize rivers; the decree placed the cancellation on entirely different grounds. After a brief recital of the terms of the contract the decree stated that one of the considerations which prompted the Government to grant so extraordinary a concession was the anticipated revenues it might receive from the exportation of the natural products of the forests; but the Government had received no revenues from this source because the company had limited its work to the exportation of asphalt "from the

deposit that they own as per concession obtained in conformity to the mining laws."

Such default, it was said, on the part of the company and the monopoly granted by the contract had prevented the opening up and the development of the wealth of that part of the country to its great prejudice. And, therefore, by reason of such default and by virtue of the ninth article of the contract, in which it was provided that a default in the performance of any of the stipulations at once annulled the entire contract, the same was declared annulled and determined, "without infringing the rights which, according to law, the New York and Bermudez Company may have by virtue of mining concessions."

Petition of Carlos Leon for revocation of decree.—On April 13, 1898, Carlos Leon, as attorney for the Bermudez company, filed with the minister of agriculture, etc., a petition praying for a revocation of this decree. In this petition he indulged in an extended argument as to the proper interpretation of the contract and as to the rights of the company thereunder.

Opinion of attorney-general.—The minister of agriculture, etc., referred the Leon petition to the attorney-general of the nation, P. Febres Cordero. On May 28, 1898, this officer made an extended report in which he held that the Executive decree of January 4, 1898, was null and void, for the following reasons:

The Government was one of the parties to the contract. Up to the time the latter was acted upon by Congress the Government was in the exercise of an administrative function; but when the contract was approved by Congress that function ceased, and the contract then became binding in all its parts upon both parties. And thereafter it was not for either party, upon his or its own motion, to declare the contract terminated for an alleged default. Such a conclusion was for judicial determination in a court of competent jurisdiction, after a full hearing from both parties. Therefore, the action of the Executive in this instance was not only arbitrary, but of no judicial value, and ought to be revoked.

Reference to high Federal court.—The minister of agriculture then referred the petition and all the documents pertaining to the subject to the high Federal court for its opinion. But the court refused to consider the matter on the ground it had no jurisdiction, except where a suit was brought.

DECREE OF HIGH FEDERAL COURT REVOKING EXECUTIVE DECREE.

The Bermudez company then brought suit in the high Federal court of Venezuela, praying for a judgment setting aside the decree of annulment. On August 23, 1898, the court rendered a decision, declaring the Executive decree aforesaid null and void for substantially the same reasons as previously given by the attorney-general. The court was careful to say that the only question upon which it passed judgment was the single question whether the National Executive had the power to declare the contract canceled. It expressed no opinion as to whether the right of cancellation existed, if the question was submitted for judicial determination; and it left the parties "all rights which they have, or think they have, to bring action in legal form before the proper tribunal."

DISSENTING OPINION.

Nine judges concurred in the foregoing decision; three judges dissented and filed a dissenting opinion. In the latter opinion the dissenting judges held that one of the parties to a contract, in case of a default by the other party, had the right to either demand performance or to declare a rescission of the contract. And the Executive decree in question amounted to no more than a declaration on the part of the Government that there had been a default, for which, it gave notice, it elected to declare the contract forfeited, leaving to both parties the privilege of asserting their respective rights by appropriate legal procedure.

THE "VENEZUELA" CLAIM.

In the meantime another attack was made upon the company in another direction. Stimulated, no doubt, by the apparent success which the claimants to "Felicidad" had achieved in establishing a title to a part of the asphalt lake, and, possibly, acting in a combination with them, another party of Venezuelans also laid claim to a different part of the lake, which they denounced as an asphalt mine discovered by them, and which they named "Venezuela."

These parties were Eduardo Capecchi, Julio Figuera, and Antonio Vincentelli Santelli. In February, 1898, they commenced proceedings under the mining law, before the local authorities of the State, and laid claim to what may be termed the northwest part of the lake. The local magistrate made entry on his records that the parties last aforesaid, as the result of certain explorations made by them, had discovered this mine, the boundaries of which were described as follows:

North and west, forests; south, the concessions owned by the New York and Bermudez Company; and east, the mine called "Felicidad," owned by General Antonio Bianchi et al.

Protest of Carner.—On April 6, 1898, Mr. Carner, as secretary of the Bermudez Company, filed with the civil chief of the district a protest against the claim of these parties, because it was located within the boundaries of the property of the company, to which it had title, including 4,800 hectares of land, acquired by deeds from the Government, dated, respectively, December 7 and December 14, 1888, both of which were registered in the district. In conformity to article 45, Title IV of the Mining Code, he gave notice of the foregoing facts and protested against any intrusion upon the company's property.

"*Venezuela survey.*"—On September 1, 1899, a survey of the "Venezuela" mine is reported, in which a description of the mine is given, by metes and bounds, beginning at a tall post at the northwest angle of the claim. The surveyor emphasizes the fact that the lines he ran separated the "Venezuela" mine from that of the Bermudez Company, and that the former was located about 10 kilometers from Guariquen.

Petition for definitive deed.—On May 7, 1900, these claimants petitioned the minister of fomento for a definitive deed to "Venezuela," but, for some reason, no action was taken thereon. Appar-

ently the parties abandoned this petition because of some defect in their preliminary proceedings. They retraced their steps, by going back to the State authorities and obtaining a new order for provisional possession, then prosecuted the preliminary proceedings anew up to the point of again petitioning for a definitive deed on October 24, 1900.

Second petition for definitive deed to "Venezuela."—On the date last aforesaid one of the claimants, Julio Figuera, filed with the minister of fomento a long and argumentative petition in which he referred to the protests of the Bermudez Company, alleged the unconstitutionality of the Hamilton contract, and asserted that at best it could only be considered a license for exploration, and that the Bermudez Company evidently so construed it, because it had afterwards applied for both land and mining titles, thereby recognizing the supremacy of the land and mining laws.

He further called attention to the fact that the company, by its titles, had located its mine at a distance of 20 kilometers from the village of Guariquen and at 180 meters above sea level, while the "Venezuela" mine was only 10 kilometers from the aforesaid village and was but 5 meters above the level of the sea; therefore the latter could not be within the boundaries of the Bermudez Company's mine; besides, the title of the latter expressed no boundaries whereby its mine could be located, therein lacking an essential element in all real estate titles. No action was taken on this petition, but about this time a new factor entered into the controversy, and for some time thereafter the contest was very warm and exciting.

Asphalt Company of America and National Asphalt Company.—The Asphalt Company of America was organized under the laws of New Jersey on June 28, 1899. The National Asphalt Company was organized in the aforesaid State on May 3, 1900. These two companies were in some way merged together, and therein was united the control of all the principal sources of asphalt production. They also included within their control a number of subordinate companies engaged in the business of paving streets with asphalt.

Warner & Quinlan's purchase of "Felicidad."—Messrs. Warner & Quinlan, of Syracuse, N. Y., were paving contractors and large consumers of asphalt. Their supply of the product was cut off, or else they had to compete in their business with a company which largely controlled the asphalt production of the world. They therefore looked around for an independent supply of the raw product.

They sent their agent, Mr. Sullivan, to Venezuela. He came in contact with the owners or promoters of "Felicidad." He is said to have made a careful examination of their title, and also of the titles of the Bermudez Company. He submitted the same to eminent legal counsel in Venezuela and, doubtless, in the United States. He was advised that by reason of the inherent defects in the Bermudez Company's titles it could not assert or maintain a claim to that part of the lake called "Felicidad," to which the title of Antonio Cervoni et al. was prior and paramount. He therefore bought the mine "Felicidad" for his principals, on May 25, 1900, and paid $40,000 cash therefor.

Construction of deed to Warner & Quinlan.—It has been said the deed to Warner & Quinlan was in effect only a quitclaim. In a brief filed by the attorneys of the Bermudez Company in the Department

of State, dated February 19, 1901, page 15, the following statement is made:

This deed shows that the purchasers were fully aware of the defects in the title to the mine (Felicidad), and had full information of the rights of the New York and Bermudez Company, *the grantors expressly freeing themselves from any liability by reason of the existence of such rights.*

On page 34 of the same brief the further statement is made:

* * * Certain American citizens, seizing the opportunity for a venture, bought the disputed title, after full warning of the circumstances and in the face of a clause which the natives, holders of the title, inserted in the body of the bill of sale to the effect that the title (not the lands) was sold *without any representations and without any guaranties whatsoever.*

Accepting the translation of this deed to be correct, as given by the Bermudez Company, in a volume filed in the Department of State entitled "High Federal Court—Warner & Quinlan *v.* N. Y. and Bermudez Co.," page 86, I think the foregoing construction of the deed is hardly correct. After reciting that the title of the grantors was derived from the Government by the deed of November 30, 1897, duly registered, etc., and "all the formalities and requirements imposed by the Code of Mines having been previously fulfilled," the deed goes on to say:

The said mine and land are free from incumbrances, * * * and, in respect to the guaranty, I pledge myself that the deed above mentioned is the only deed granted for the "Felicidad" mine by the National Government, in conformity with the Code of Mines. * * * Moreover, I grant and transfer to the purchasers, *without any responsibility on the part of the vendors, all causes of action which may exist to my principals for demanding the guaranty of title for which there may be need.*

The deed, therefore, contained an express warranty against incumbrances; that the title conveyed was acquired in conformity to law, and that it was the only legal title ever granted by the Government for the mine in question. These warranties, representations, or pledges came very near making the deed one of warranty. Certain rights of action for the defense of the title were assigned; as to them, the grantors accepted no responsibility.

This question is not a very material one at the present time. It arises in the consideration of only one phase of what has been denounced as a conspiracy, and is only illustrative, in part, of the relation of Warner & Quinlan to the controversy.

In the meantime the representatives of the Bermudez Company were not idle. They filed with the minister of fomento protest after protest, vigorously asserting their company's title to all of the lake, and protesting against titles being granted to other parties in conflict therewith.

Second protest of the Bermudez Company.—On March 31, 1900, Mr. Carner addressed a communication to the minister of fomento, in which he said he was informed that Patrick Sullivan, accompanied by a surveyor, had been on the property of the company, and had made explorations on the same, with the evident purpose of making a denunciation thereon. He recited the decree of the high Federal court of August 23, 1898, supra, whereby, he asserted, the validity of the Hamilton contract was upheld; and he asked that the local authorities be warned against these threatened trespasses.

Third protest.—On April 3, 1900, Andrew J. Vigas, as an attorney for the Bermudez Company, presented a memorial to the President and his ministers. He summarized the work of the company, the large industry it had established, the revenues it had paid the Government, and added that, after seventeen years of peaceable possession, other people, both natives and foreigners, were disposed to trespass on the company's rights. He called special attention to Warner & Quinlan, who were deceiving the local authorities by falsely representing they were authorized by the national Executive to intrude upon the company's property for the purpose of exploration.

Fourth protest.—On April 26, 1900, Vigas filed another protest substantially to the same effect as the previous one, in which he also said that by reason of the company's labor and investment of capital it had made—

> Regions hitherto unknown, uninhabited, and impenetrable to the human foot now open to active commerce, etc.

Fifth protest.—On July 17, 1900, Mr. Carner addressed the minister of fomento, and referred to the company's land and mining title, stating that the minister had granted a deed for the "Felicidad" mine, and a claim had been made for a like deed to the "Venezuela" mine; that both mines were within the boundaries of the lands and mine of the Bermudez Company, wherefore the deeds to "Felicidad" and "Venezuela" could have no effect; and he asked the minister to so declare.

It is to be observed that in some of these protests there is no reference made to the Hamilton contract; in others there is only incidental reference thereto. Apparently it was not asserted or relied upon as a bar to the location of mining rights within the territory covered by it. The protests are largely, if not entirely, based on the theory that the Bermudez Company's land and mining titles were prior in point of time, and therefore had precedence over any subsequent adverse location within the boundaries prescribed by those titles.

Therefore the question more directly pressed upon the minister of fomento was whether or not the mines called "Felicidad" and "Venezuela" intruded upon the property previously conveyed to the company by its aforesaid titles.

Castro's revolution.—In the year 1899 Cipriano Castro had successfully led a revolution against the constitutional authorities of the Government. He assumed executive power under the name of the supreme civil chief. He appointed an entirely new body of ministers and officers. The aforesaid controversy between two sets of Americans—the Bermudez Company on one side, Warner & Quinlan on the other, the latter supported by the native claimants to "Venezuela"—came to the attention of the new Government.

The question at issue being largely limited to one of conflicting boundaries, the minister of fomento naturally thought the best thing to do was to order a new survey by an independent and impartial surveyor.

Order for new survey.—Accordingly, on July 23, 1900, the minister entered an order, in which he recited the last protest of Carner, and ordered that Thomas C. Llamoza be appointed technical inspector of

mines pro tempore; that he repair to the location of the disputed mines; that he examine all the documents and charts in the ministry; that he then make a topographical map showing the true location of the mines; and that he make a full report on the matter.

DECREE OF MINISTER OF FOMENTO—COMPANY HAD PERFORMED HAMILTON CONTRACT.

On July 23, 1900, pending the controversy going on between the respective parties as to the location and extent of the concessions or grants to the Bermudez Company, evidenced by its land and mining titles, the minister of fomento gave the company, at the request and on the petition of Mr. Carner, a certificate, wherein it was recited that the Bermudez Company had, up to date, fulfilled all of its obligations imposed upon it by the Hamilton contract of September 15, 1883, and the additional article of October 19, 1883, which had been approved by the Federal Congress June 5, 1884, and confirmed by the high federal court on August 23, 1898.

And, he said, bearing in mind that the aforesaid contract, in its second article, gave the Bermudez Company the right to exploit the asphalt of the State of Bermudez, and by the eighth article the Government agreed to not grant equal concessions in the same State to any other person, the supreme civil chief of the Republic had resolved:

1. That the said company may exercise each and every of the rights granted to it under the said contract in the manner and under the terms set out in the said contract, and at any time whatever within the term provided in article 8; and,

2. That the New York and Bermudez Company has the right of preference in every case of denunciation of asphalt mines or wild lands which constitute or are in the limits of the concession, on having previously complied with the requirements of the respective laws on the subject.

For the national Executive:

V. T. VILLIGAS PULIDO.

Llamoza's map.—On August 22, 1900, Llamoza made a report to the minister, and submitted a map, which he said was drawn with great exactitude, and showed all the facts relating to the subject.

Sullivan's protest.—Mr. Sullivan, the agent of Warner & Quinlan, objected to Llamoza's report and survey. On August 25, 1900, he filed with the minister of fomento a vigorous protest, in which he said a new survey was unnecessary, because the archives of the ministry furnished all needed information; that he objected to Llamoza's survey because it was made without giving a hearing to both parties to the controversy; in fact, it was made under the direct supervision of the Bermudez Company, and, finally, he said he would not accept any report made by Llamoza which was contrary to the plan submitted by him (Sullivan).

Order appointing a board of surveyors.—The minister of fomento on September 6, 1900, made another order, in which he recited the Sullivan protest, and said the supreme civil chief (Castro) had ordered that a new plan of the two mining concessions—Bermudez Company's and "Felicidad"—be made; that the Government appoint one engineer and each of the other two parties appoint one, and to these three engineers so appointed there be delivered all the documents, etc.

Carner's objection.—Mr. Carner, in his previous protests, had not pressed the Hamilton contract as a bar to Warner & Quinlan's claim. His contention before the minister had been that the latter claim was located within the boundaries of the lands and mine of the company granted to it by its aforesaid land and mining titles.

Carner's protest against order.—But on September 7, 1900, he filed with the minister a protest against the order appointing the commission or board of engineers. He objected to the order because to agree thereto might be construed as a recognition of the right of the claimants to "Felicidad" and "Venezuela" to locate mines in the State of Bermudez, which, in turn, might have the effect of a renunciation or waiver on the part of the company of its exclusive right in that territory under the Hamilton contract. Bnt, if the minister insisted on the company naming an engineer, he would do so, reserving, however, all the rights of the company, including the right to petition the high federal court to set the order aside. Under these conditions he named Dr. German Jiminez as the engineer selected by his company.

Report of engineers.—Dr. Luis Julio Blanco, the engineer selected by the Government, made a report to the minister on November 6, 1900, in which he said, in obedience to the foregoing order, the three engineers selected as aforesaid went to the location in dispute and the other two engineers made surveys under his inspection.

These engineers took as their starting point the southeast corner of a church in Guariquen, and ran a line along the roadway from the point aforesaid to the lake, and made such further surveys as were deemed necessary in order to locate the respective mines. Doctor Blanco said when these engineers had finished it was found their surveys were substantially the same, and he approved them both.

Tebar's survey.—Doctor Tebar, the engineer selected by Warner & Quinlan, filed a map or survey, but no written report, which map showed the asphalt lake; it also showed that the "Felicidad" claim was located on the easterly or northeasterly side of the lake; also the location of the "Venezuela" claim was indicated as being on the northwesterly side. The two claims together took up more than the north half of the lake, and the northerly line of each of them was shown to be 10 kilometers from Guariquen. The mining operations of the Bermudez Company were also indicated as located on the extreme south side of the lake.

It should be noted the record shows that when the Bermudez Company commenced work at the lake it did so on the north side, toward the village of Guariquen, the latter place being northwest on the Guariquen River, to which place the company transported asphalt by means of pack mules or donkeys and shipped the same by vessel on the Guariquen River.

Subsequently the company removed its mining operations to the south side of the lake. From this place it constructed a railroad, some 6 miles in length, running southwest to a point on the Guanoco River, where it constructed wharves, warehouses, etc. At this last-named place, now called Guanoco, it loaded its asphalt into vessels; the latter passed south down the Guanoco River to the San Juan River, then east on the last-named river to the Gulf of Paria.

Therefore, when these last surveys were made the company had long since abandoned mining operations on the north side of the

lake and was not then, and for many years prior thereto had not been, in the actual or open possession of the particular parts of the lake covered by the claims called "Felicidad" and "Venezuela." And, taking into consideration that the area of the lake was from 1,000 to 1,400 acres, it is apparent the works of the company were some distance from the location of the aforesaid claims.

Sullivan's petition.—On November 7, 1900, the next day after the report of Doctor Blanco was filed, Mr. Sullivan, agent for Warner & Quinlan, filed a petition with the minister of fomento, wherein he recited the controversy between his principals and the Bermudez Company. It was a long argument against the claims of the last-named company, and was to the following effect: The report of the engineers showed that, by the company's land and mining titles, its property was located 20 kilometers from the village of Guariquen, while the "Felicidad" mine was located only 10 kilometers therefrom; therefore there could be no confusion as to boundaries, and the claim that the "Felicidad" was within the boundaries of the Bermudez Company's mine was without foundation.

The right to a mine, he said, must be established by the title, and in this case there could be no conflict of titles, because the locations therein given were different, and this difference was confirmed by the surveys just made under the direction of the minister. It was true the Bermudez Company was working in a part of the lake, but this operation was only 11 kilometers from Guariquen; therefore the company was working a deposit to which it had no title. By what right, he asked, did the Bermudez Company disturb the owners of "Felicidad" in their possession? It had been shown the company had no title thereto. It could not be the right of occupation, because the company did not occupy that part of the lake; its occupation was at Guanoco; it never occupied or possessed "Felicidad."

He further said the Hamilton contract could not be asserted as excluding the owners of "Felicidad," because that contract was not only unconstitutional and contrary to the letter and spirit of the general laws of the country, but it was an attempt to create a monopoly, which was a hindrance to the development of a rich and productive country. He therefore asked the Government to put a stop to such unfounded pretensions as were advanced by the company.

Petition of the company.—On November 9, 1900, the Bermudez Company, by Carlos Leon, its attorney, also petitioned the minister of fomento, and submitted therewith a report of German Jiminez, the surveyor appointed by the company as a member of the aforesaid commission, from which it clearly appeared the "Felicidad" claim was an intrusion upon the rights of the company acquired by it under its land and mining titles; and he asked the minister to so decide.

Report of German Jiminez.—German Jiminez, the engineer named by the company as a member of the commission of surveyors, made a very lengthy report, bearing date November 7, 1900. This report disclosed what is perhaps the strongest if not the only defense the company can make of its claim to the lake under its land and mining titles. The report was, in substance, as follows:

According to the official map of the Bermudez Company's survey (the Mombello map of 1888), the boundaries of its property were straight lines, at right angles, running east and west and north and

south. The location of any one of these lines was sufficient to establish the boundaries of the company's concession. Hence, he said, he confined himself to the location of the north boundary line, as shown on the Mombello map.

According to the aforesaid map the northern boundary line ran east and west through a house or "rancho;" the line extended 4 kilometers eastward and 2 kilometers westward, thereby determining the two extremities of the line.

In the company's petition of October 8, 1888, presented to the president of the State of Bermudez, praying for provisional title to wild lands to be used in connection with its proposed mine, it was stated that the mine was located on a road built by the company,

twenty kilometers toward the southeast from the town of Guariquen to a house owned by the company, standing on this road and *situated on a small eminence before arriving at a wooden bridge which leads to the surface of the asphalt deposit.*

The house, then, which stood at the end of the road from Guariquen was located on the northern boundary of the survey. After a careful examination the commission found on the north side of the lake a "rancho," standing exactly east and west, upon a small hill or eminence just before reaching the ruins of a wooden bridge which led to the surface of the asphalt deposit. If doubt existed as to the identity of this house with the one to which Mombello referred in his survey, then, assuming the latter house had disappeared, the other conditions specified in the petition still existed, viz, the small eminence and the bridge.

At the place in question there was found a small eminence and the ruins of a bridge leading to the asphalt lake. Southeast of Guariquen and beyond the remains of the bridge there were no hills—only a plain of asphalt, the only one in the neighborhood—and beyond, mangrove trees and swamps; this, therefore, was the only place which filled the conditions specified in the Mombello survey. It was also known that when the company commenced its operations it did so on the northern side of the lake and transported its exploited material to Guariquen; for which purpose it built a bridge to the lake, the ruins of which still remain.

Therefore Mombello, in his map, made an error in locating the northern boundary line of this survey at the distance of 20 kilometers from Guariquen. But the location of this line was established by fixed monuments, which remain, and Mombello's error was an immaterial detail. It was not to be presumed the Government intended by its definitive deed to the company to locate the asphalt deposit therein described 20 kilometers from Guariquen, where there were neither "ranchos," nor hills, nor asphalt—nothing but mangrove trees. If there were various lakes of asphalt in that neighborhood, it might be a question which one belonged to the company, but there was only one lake, and good faith removed the question of its identity with the one described by Mombello beyond discussion.

Sixth protest by Carner.—On November 10, 1900, Mr. Carner filed with the minister another protest against the claim made for definitive title to "Venezuela," in which he recited substantially the grounds for his protest set forth in his previous petitions and protests.

Third petition for deed to "Venezuela."—On November 14, 1900, *Julio Figuera*, as the attorney for the claimants to "Venezuela,"

again petitioned the minister of fomento for a definitive deed to the mine "Venezuela."

In this petition he discussed at length the economic aspects of the question before the minister for his decision. The three asphalt mines in controversy formed a lake which was the largest in the world; it was sufficient to engage the activities of the three companies.

The Bermudez Company was operating on only a small part of the lake, and opposed exploitation on a larger scale for the sole purpose of preventing competition. In the company's own interest, it demanded that Venezuela should prevent the further development of this important industry. The Republic was interested in the development of its natural resources, the fountains of its prosperity, and private interests, however legitimate, should give way to the public interest.

The Bermudez Company's titles were defective; the boundaries thereof were not set forth; neither the mine nor the land had any specific name. Article 1882 of the Civil Code provided:

> Every deed, which must be registered, shall declare the property to which it applies, its boundaries, its specific name when it has any, its State, province, district, canton, or parish, and other circumstances which may serve to identify it.

And article 1885 of the same code provided:

> Any deed which has been registered, in which the formalities established by the two preceding articles are not fulfilled, shall have no effect against third persons in respect to the part on which the omission may occur.

In the case of the mine exploited by the Bermudez Company there was an absolute lack of certainty concerning the land which formed the subject of the deed. The mine operated by that company was not the one specified in its deeds, because the former was about 12 kilometers distant from Guariquen, and the deeds called for a mine 20 kilometers distant therefrom. He renewed his prayer for a definitive deed.

EXECUTIVE DECREE CONFIRMING TITLES TO "FELICIDAD" AND "VENEZUELA."

Minister confirms title to "Felicidad" and grants title to "Venezuela."—On December 10, 1900, the minister of fomento, by the "director of territorial wealth," the head of a bureau in the department of fomento, made a decree deciding the controversy. He recited the petition of Carner, July 17, 1900, objecting to the claims of "Felicidad" and "Venezuela;" the appointment of the commission of surveyors, and their report; and then he said, in substance, that the Hamilton contract did not give the company the exclusive right to exploit asphalt; it was not so stipulated in the contract; monopolies were not to be presumed; if granted, it must be by clear and express terms; and in case of doubt the interpretation should be in favor of liberty.

The Bermudez Company's definitive mining title of December 7, 1888, granted title to a mine situated 20 kilometers from the village of Guariquen, and at a height of 180 meters above the level of the sea.

The land title of December 14, 1888, conveyed lands also situated a like distance from Guariquen.

The asphalt deposit which the company was working was situated 10 or 12 kilometers from the aforesaid village, and at a height of 4 or 5 meters above sea level; that is, some 8 kilometers farther north than the place mentioned in the company's definitive title.

The "Felicidad" and the "Venezuela" mines were situated less than 11 kilometers from the same village, therefore these last-named mines could not be located within the boundaries of the mining concession of the Bermudez Company, as described in its title.

Even granting that the title of the Bermudez Company conformed to the location of the mine operated by that company, yet, it could not oppose granting titles to other parties, because in its title no boundaries were mentioned, which were essential elements in the determination of all real estate titles.

According to article 13, section 15, of the national constitution of 1881, mines were the property of the State. The administration thereof was ceded to the Federal Government in order that they might be exploited by a uniform system. Consequently no monopoly could have been granted Hamilton without it being in derogation of the law then in force.

It was, therefore, ordered that the petition of the Bermudez Company of July 17, 1900, praying for the nullification of the title to "Felicidad," and objecting to granting a title to "Venezuela," be denied; that the title of Warner & Quinlan to "Felicidad" be confirmed, and a definitive title to "Venezuela" be granted.

Protest by Carner—Petition for stay of proceedings.—On December 14, 1900, Mr. Carner, in behalf of the Bermudez Company, filed with the minister of fomento a protest against the foregoing order, because it annulled the order of July 23, 1900, likewise the titles of the company and the contract of which it was the assignee, and infringed upon the company's right and despoiled it of its property. On the next day, December 15, 1900, he filed with the aforesaid minister a petition praying for a stay of proceedings under the foregoing order, leaving the company at liberty to enforce its rights in such manner as might be proper.

Railroad concessions.—On December 15, 1900, the Government granted to Warner & Quinlan a concession to build a railroad from the mine "Felicidad" to a point on some of the neighboring rivers, and on the 17th of the same month a like concession was granted to the owners of the mine "Venezuela."

Definitive deed to "Venezuela" granted.—On December 17, 1900, the minister ordered that a definitive deed be given the claimants to "Venezuela," and on the next day, December 18, the same was executed.

In the aforesaid "statement of the wrongs done to the company," filed by the Bermudez Company with the Department of State, it is stated, page 13:

> In January, 1901, the Government of the United States demanded that executive proceedings to despoil the company be suspended, and that the company be protected in the peaceful possession of its property till an investigation by the United States could be made. In apparent deference to this demand judicial action was substituted for executive action, and on February 16, 1901, a suit was brought in the high federal court by the attorneys of Warner & Quinlan to compel the company to admit the validity of "Felicidad" title.

Although this suit was terminated some time ago, apparently in *favor* of the company, and the litigated questions of law and fact

therein presented are not directly involved in this inquiry, yet it is suggested in the above quotation that it was merely the substitution of judicial action for executive proceedings for the purpose of despoiling the company of its property. I therefore read the record of this suit to determine what questions were involved, what was the demeanor of the court toward the parties, the evidence presented, if any, of the alleged conspiracy, of which this judicial proceeding is said to have been a part, the decision of the court, and the reasons given therefor. Besides, it is necessary to take into consideration the issues in this case and the decision of the court in order to determine the present legal status of the company's property rights.

WARNER & QUINLAN *v.* NEW YORK AND BERMUDEZ COMPANY, HIGH FEDERAL COURT.

On February 16, 1901, Warner & Quinlan commenced a suit against the Bermudez Company in the high federal court of Venezuela, which corresponds somewhat to the Supreme Court of the United States. The complaint was in the nature of a bill in equity to quiet title, although the courts of the country have no separate system of equity jurisprudence.

The bill alleged, in brief, that the complainants were the owners of the mine called "Felicidad," which they had acquired by purchase from Antonio Cervoni et al., who in turn had acquired the same from the Government by the definitive deed dated November 30, 1897.

That the complainants intended to operate the mine, but the Bermudez Company claimed the title to "Felicidad" was not valid; that it was included within the boundaries of a mining concession granted to A. H. Carner in 1888, and that by the Hamilton contract of 1883, of which the company was assignee, the Government could not grant a title to "Felicidad."

That it was not true the "Felicidad" was located within the boundaries of the Carner concession, as was apparent from an inspection of the deeds, surveys, etc. And as to the Hamilton contract, it did not by its own terms confer upon the company the exclusive right to exploit mines, therefore it was not in conflict with the rights of the complainants; besides, if the contract assumed to give such exclusive rights, it was in violation of the constitution and laws of the Republic.

The Bermudez Company had petitioned the Government to annul complainants' title; though that petition was denied by the decree of December 10, 1900, yet the company had filed a protest against such decree.

Wherefore the complainants appealed to the court to decree that the Bermudez Company acknowledge the validity of complainants' title, or, in default thereof, that the court adjudge such title to be valid and superior to the claims of the Bermudez Company, etc.

The high federal court.—This court consisted of ten members elected by the legislatures of the States, and provision was made for a standing list of substitutes from which a judge could be drawn to fill any vacancy occurring for one cause or another.

It seems to have been the practice when a case like this was commenced to refer it to the president of the court, who was called the judge of examination, or the judge in the first instance, or the hall of first and only instance. He passed on the pleadings and motions,

received the testimony, issued interlocutory orders, and prepared the complete record of the case for final decision by the full court.

PROCEEDINGS BEFORE JUDGE OF FIRST INSTANCE.

Accordingly, in the suit under consideration the case was referred to the president of the court, as judge of examination, or judge of first instance. On March 22, 1901, service was had on the Bermudez Company, and it entered its appearance on the day following.

Exceptions to bill, April 17, 1901.—On April 17, 1901, the company filed three "exceptions" to the bill of complaint:

1. The court had no jurisdiction of the subject-matter of the suit; the latter should have been brought in the local or State court.
2. The complainants' attorneys had not exhibited sufficient warrants of attorney to authorize them to begin the suit.
3. Want of security for costs.

Decision on exceptions, May 25, 1901.—An issue of fact on these exceptions was made, proof was taken thereon, and on May 25, 1901, the judge, after an extended discussion of the several questions presented, overruled the first two exceptions, but sustained the third.

Petition for review of decision.—On May 28, 1901, the defendant filed a petition praying for a review of the foregoing decision on the ground the judge had no authority to make it; that his authority was limited to that of examination, and did not embrace the right to decide; therefore the judge was asked to set aside his order on the exceptions and to restore the record to the condition it was in before that decision was made, so that it might be presented to the full court, and if that could not be done, then the judge was asked to review his decision and to declare the court lacked jurisdiction over the entire proceedings.

The complainants replied to this petition, and the defendant replied to them, and a protracted and lengthy argument followed, wherein the organization of the courts and the constitution and laws applicable thereto were fully and ably discussed.

Decision of judge.—On May 31, 1901, the judge decided "that the power of examination, in its legal sense, includes the supervision of an action at law; and of its development to and including the point where it is in readiness for a decision on its principal matter or on its chief subject." And, after making what seemed to be pertinent citations to the organic law of the courts, he held that as a judge of first instance he had the authority to decide upon all preliminary or interlocutory questions that arose in the course of the hearing, subject, however, to review by the full court. The petition for review was denied.

Two appeals by defendant.—The defendant by petition on the same day, May 31, gave notice that it appealed from the foregoing decision. And by another petition it also gave notice that it appealed from such part of the previous order of May 25 as it had the right to appeal from.

Order allowing appeal.—On June 1, 1901, the judge, after reciting the foregoing petitions, allowed an appeal from the order of May 31, and likewise as to that part of the order of May 25 which referred to the exceptions to the authority of plaintiff's attorneys, which, he

manager and the other as legal counsel. They are said to have been, and still are, intimate friends. Doctor Leon is now one of the judges of the high federal and cassation court, and is said to have intimate relations with the national administration. Whether there was any connection with his withdrawal from this suit and Carner's withdrawal from the company I do not know.

Two new attorneys now appeared in the lawsuit for the defendant company, Drs. Manuel Clemente Urbaneja and Claudio Bruzual Serra. It is not my purpose to discuss every detail of this suit, or to note all the incidents connected therewith, or the questions of practice raised, the motions made, or the rulings of the court thereon. There were many of them, and a great deal of time was taken up, and much controversy was provoked.

But I wish to develop the history of these two appeals above noted, to show the questions therein involved, the action of the court thereon, and especially the attitude of these two new attorneys toward the court. For, during their connection with the case, incidents occurred of tragic interest, in which both of them were imprisoned and one of them died.

Let us recall the state of the record up to this point. The defendant filed in the court below three exceptions to the bill of complaint: (1) The court had no jurisdiction; (2) the plaintiff's attorneys did not have sufficient authority to bring the suit; (3) and the plaintiffs had not given security for costs. The first two exceptions the judge overruled, the third he sustained.

The defendant then filed a petition for review or rehearing on the ground the judge, as a judge of examination, had no authority to decide the exceptions; they should have been submitted to the full court. The judge denied the petition. The defendant appealed to the full court from this decision, and also appealed from that part of the judge's previous decision wherein he held that the authority of plaintiff's attorneys was sufficient. Two questions, then, were involved in the appeal: First, did the judge have authority to pass on any of the exceptions; second, if he did have such authority, then was his decision right on the question of the sufficiency of the warrants of attorney?

In his petition of June 27, 1901, Doctor Leon not only asked the court to determine which of the appeals had precedence, but also suggested that the hearing of the entire case should be suspended until the plaintiffs gave security for costs. The plaintiffs charged the defendant with inconsistency in this suggestion. Although the judge below had decided that security for costs was necessary, yet the defendant, in its appeal, contended the judge had no authority to pass on the exceptions; and if defendant was right in that contention, then the ruling of the judge below on the question of costs was also without authority; and the defendant, in asking the appellate court to overrule the judge's order on two of the exceptions for want of authority, and to enforce his order on the third, was wholly inconsistent. But the court made no ruling on this point.

THE "PHANTOM OF INTERNATIONAL DISPUTE" AGAIN RAISED.

The first thing the new attorneys did was to again bring up the question of security for costs. On July 31, 1901, they filed a petition

On July 1, 1881, Doctor Zuloaga, attorney for Warner & Quinlan, vigorously and in heated terms replied to the foregoing petition. He contended that both appeals could be heard together; that they practically involved but one question; that common sense demanded the court should first consider the question as to the jurisdiction of the judges below. If the court held he had jurisdiction to decide the questions presented by the exceptions, then the court could decide the other point. He then went on to say:

Phantom of international dispute.—The attorneys on the other side talk constantly of infractions of the law, which exist only in their imagination, but of which they wish to make an entry on the records, as they say, because the Bermudez has especial interest therein. *It is the ridiculous phantom of international dispute. It is coercion applied to the courts by an inconceivable method.* Venezuela is a sovereign nation, and it administers justice as a sovereign upon whomsoever justice may fall.

Order motions be attached to record.—On the same day the court ordered that the foregoing documents submitted by the respective attorneys be added to the record, and said the same would be considered at the proper time. The attorneys for the company protested against this order, inasmuch as it postponed judgment on a material preliminary question.

Order of court.—It seems to be the practice in this court, when a case comes on for hearing, to read, formally and orally, the entire record, page by page, and day by day, until the reading is completed. If for any cause one of the judges retires or is absent, another judge is called from the substituted list to fill the vacancy, then the court goes back and reads all the record over again. So, it appears, when these appeals in this case came before the court, the latter began the formal reading of the record.

Member of court challenged.—Previous to the filing of these several petitions the defendants had challenged one of the judges as being incompetent, because he was related in the first degree of consanguinity to one Maury, who it was said was taking up other mining claims in the State of Bermudez, and therefore was interested in the termination of this suit; but this challenge was overruled because it was not made in apt time.

Doctor Leon withdraws as counsel for the company.—About this stage of the proceedings Dr. Carlos Leon, the leading attorney for the defendant, announced his withdrawal from the case, because the Bermudez Company had not paid him his fees. He was also allowed to inject into the suit then before the court another suit on his own account against the company to recover the fees which he alleged the latter owed him for services, and which he placed at the sum of 10,000 bolivars ($2,500). The defendant company answered that Doctor Leon had been its counsel for some time on a fixed salary of $500 per month, which had been regularly paid him, and his monthly receipts in full were produced. Leon replied that such employment and salary did not include the special service rendered in this case, for which he asked additional compensation. Ultimately the court decided against Leon on the ground the salary regularly paid him included his service in the present case.

About the time the original suit was commenced Mr. Carner retired from the company's services. He and Doctor Leon had been long associated together in the defense of the company, the one as

manager and the other as legal counsel. They are said to have been, and still are, intimate friends. Doctor Leon is now one of the judges of the high federal and cassation court, and is said to have intimate relations with the national administration. Whether there was any connection with his withdrawal from this suit and Carner's withdrawal from the company I do not know.

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in which they called attention to the fact the plaintiffs had not given security for costs, though a rule to that effect had been imposed upon them. Therefore they asked the court to declare whether or not the suit was suspended until such security had been given.

On the same day the plaintiff replied that the pending appeal was based on the alleged nullity of the judge's decision on the exceptions and the security could not be required until it was determined whether or not the judge had the authority to pass on that question as well as on the other exceptions.

Petition of defendant's attorneys of August 7, 1901, challenging entire court.—On August 7, 1901, the attorneys for defendant filed a lengthy petition in which they reviewed the ruling of the court below on the question of costs, the petitions which had been made to the appellate court for an order to compel plaintiffs to give the security or to suspend further proceedings, and the court had disposed of these petitions by saying that previous orders of the court controlled the matter, while none of the orders referred to had anything to do with the question.

Moreover, they said, when one of the members of the court was challenged for good cause, the challenge was overruled because it was not made in time, despite the fact the cause for the challenge did not arise until the moment it was made. In so ruling the court had adopted "Hebraic" methods of interpretation, which took no account of the reason of the law; the court had favored the plaintiffs "*in a manner which may be understood to mean illegal complicity;*" the court had improperly given them its support; the members of the court had thereby incurred the ground of challenge set forth in subdivision 9, article 117 of the Code of Civil Procedure, and counsel, in the fulfillment of their duty to their client, formally challenged all the members of the court.

The counsel further said the challenge to the members of the court deprived them of all jurisdiction, and they quoted the law which provided that in case of such a challenge substitute members or persons on the supplementary list should be summoned to take the place of the challenged judges. And counsel proceeded to say:

> But this order of the court, declaring on its own motion that it is not properly challenged, is an additional proof of the grounds on which we base the challenge; and it does not surprise us that the court not only denies us the right of defense, which denial constitutes in itself the most flagrant deprivation of justice and a notorious injustice, but that it also carries its *illegal favoritism* to the point of deciding in favor of our adversaries the case which the law directs to remain suspended until Messrs. Warner & Quinlan, as foreigners not domiciled in Venezuela, shall comply with the duty of giving security of 100,000 bolivars, which this tribunal has imposed upon them. * * * And we protest against the violations of law now being committed, which constitutes a notorious injustice from which there is no appeal.

DECREE OF COURT ON THE APPEALS.

On August 14, 1901, the court rendered a decision on the appeals in a well-written and well-considered opinion. It reviewed every step taken in the case from the beginning. It referred to the attack made on the integrity of the court by the challenge of the defendant's attorneys in well-tempered language and with becoming dignity. Citations were made to provisions in the code which provided, in substance, that challenges to the members of a court might be made at

any stage of the proceeding until the day previous to that on which the case was submitted, after which time no challenge could be entertained; and the challenge in this case was made after the case had been submitted. The court further said:

On entering upon the arguments herein, it is observed that the grounds on which this unusual challenge is based have no legal value or weight; in assenting to the said challenge the court would, of its own free will and under the influence of its duty as its own moral judge have withdrawn from the cognizance of this action; but since such withdrawal could be based only on scruples arising from strange subtleties, it is not possible for the court to abandon the fulfillment of its judicial obligations for exaggerated reasons of personal delicacy; nor would it be possible for the court to distort its view of said obligations under the influence of the argument ad terrorem of denial of justice or notorious injustice, which argument appears again in the course of this proceeding; because although such argument implies a severe accusation against the highest court of the nation, it is certain that no true consequence can be drawn from a false affirmation. Such arguments should not be freely used, because, aside from other important reasons, they change the very nature of law and give an unjust and threatening character to the interested opinion of the parties.

After an elaborate discussion of the different sections of the code and organic law bearing upon the questions involved in the appeals, which citations seem to justify the conclusion of the court, it held: (1) The challenge brought against the members of the court was improper. (2) The judge of examination had authority to decide dilatory exceptions such as were made in this case. (3) The decision of such judge was affirmed in all its parts.

CAUSE REMANDED TO JUDGE OF FIRST INSTANCE.

On August 26, 1901, the cause was remanded to the judge of examination for further proceedings. The plaintiffs had offered the Bank of Caracas as security for costs; objections were made as to the corporate authority of the bank to execute such an obligation; and a long wrangle ensued over this question, which continued almost daily until September 27, when plaintiffs finally gave the bond of an individual citizen, which was accepted.

The defendant entered its appearance on March 28, 1901. Its answer to the bill of complaint was not filed until September 28 of the same year, being a period of six months; all of which time was taken up by the appeals on the preliminary questions heretofore noted and the question of security of costs.

THE ANSWER OF THE BERMUDEZ COMPANY.

The answer filed was more of a demurrer to the bill than a statement of facts.

The allegations of the bill were fully recited and the query was propounded: If the plaintiffs' property, "Felicidad," was absolutely distinct from that possessed by defendant, why was the latter called upon to acknowledge plaintiffs' title thereto; what interest had plaintiffs in discussing with the defendant the merits of their title?

Upon examining the record of the title to "Felicidad," even assuming it was a separate property as alleged, the title was absolutely null and void, because of "inherent defects therein."

The "Felicidad" was a part of the asphalt lake, which the defendant had legally held and exploited for fourteen years, which it

acquired under legal title, and had peacefully possessed for a longer period than required for ownership by prescription, and a title by prescription was offered in defense of the rights of defendant.

The jurisdiction of the federal court over the case was denied. It was a suit between individuals; it involved conflicting claims to asphalt mines, and the ordinary jurisdiction was to be found in the courts of the State of Sucre, wherein the mines were located.

The right of the plaintiffs to maintain the suit was denied. It appeared from the warrants of attorney filed by plaintiffs' attorneys that the plaintiffs had formed an association called the Warner-Quinlan Asphalt Company, which was to exploit the mines. If the assumed mine called "Felicidad" belonged to the company last named, then there was want of proper parties as plaintiffs.

And for the reasons aforesaid the defendant denied the bill of complaint in all its parts, and denied not only the statements of fact but the conclusions of law therein set forth.

Evidence of plaintiffs.—The evidence on the part of the plaintiffs consisted largely of the records of the title to "Felicidad," the land and mining titles of the defendant, maps, surveys, etc., and the depositions of surveyors and of witnesses to the fact that the Bermudez Company had never worked in that part of the lake whereon "Felicidad" was located; that possession of "Felicidad" had been given to Antonio Cervoni et al. by the State authorities; that such possession had been formally transferred to the plaintiffs, and that the Bermudez Company had never exercised any physical control over that part of the lake until the preceding January, when it built a wire fence around the same.

Evidence of defendant.—The defendant petitioned for the appointment of experts to make comparisons of all the maps, surveys, etc., and to make a map with all previous surveys superimposed thereon. It introduced the depositions of some witnesses to the effect that in 1886 the company commenced mining asphalt on the north side of the lake; that on such north side there was a lagoon or body of water between the land and the asphalt deposits; that the company built a bridge across this lagoon, also a causeway made of asphalt, leading to the deposit; that it built or rented a house or shed on the slope of a hill extending down to the lagoon, for the use of its workmen and for the storage of its tools, and that the ruins of such bridge and causeway still remain; that it transported asphalt from the lake to Guariquen by mules and donkeys and shipped the asphalt in vessels from Guariquen. It also introduced all the maps, plats, and reports of engineers, and the record of its land and mining tiles.

Deposition of Mombello.—The company also introduced the deposition of Mombello, the surveyor, who made its survey and plat for its wild-land title. This deposition was taken in Turin, Italy. The witness said it was probably true when he made his survey and made the measurement between Guariquen and the lake he did so along a mule track then existing between said points, but he could not say positively, as it was some fourteen years ago and he did not have his notes, records, and memoranda wherewith to refresh his memory. He was, at the time of this survey, inspector of mines in Venezuela; had made a great many surveys under all sorts of topographical conditions, and at this interval of time he would not assume to say positively what he did.

As to the elevation of the lake above sea level he was still more vague and uncertain in his testimony. Without the original map and report made by him his answer, he said, was necessarily a conjecture or supposition. If the 180 meters mentioned referred to the asphalt lake and the observations of others showed the elevation to be only 1.80 meters, then the only explanation to be given was that the decimal point was omitted in the number as given in his report, the error, probably, of some clerk, as he had at the time some 60 assistants acting under him.

DECISION OF HIGH FEDERAL COURT.

After the conclusion of the evidence the record was made up, and on June 17, 1902, on motion of the defendant, the case was then referred to the full court, called the "hall of sole instance," for argument and final decision, and on June 20, 1902, the record was received and filed in the court last named.

Decision of the court.—On January 28, 1904, the court handed down a very lengthy opinion, rendering a final decision of the case. The court said, in substance, that the plaintiffs based their action on the following grounds: (1) That the mine "Felicidad" consisting of 283 hectares, situated, etc., was granted to Cervoni et al. by deed of November 30, 1897. (2) That the mine aforesaid was granted to Warner & Quinlan, the plaintiffs, by Cervoni et al. (3) That Warner & Quinlan proposed to work the mine, but the Bermudez Company pretends their title is not valid, that it was located within another concession granted to it in the name of its secretary, A. H. Carner, in the year 1888, and that by virtue of the Hamilton contract the Government could not grant title to "Felicidad."

The court then recited in detail all the steps taken in the case, the titles and records offered in evidence, the decision of the judge in first instance, the appeals taken, the decision thereon, the challenge made to one of the judges, and the answer of the defendant.

The court said the defendant alleged the title to "Felicidad" was null and void; that the so-called mine was in fact nothing but a part of the asphalt lake which the company had possessed and exploited for the past fourteen years; that in such district there was no other known asphalt lake except the one the company was exploiting; it pleaded limitations in support of its title; it excepted to the jurisdiction of the court, and denied that Warner & Quinlan were the proper parties plaintiff.

Extension of time had been given both parties to take depositions in foreign countries, all of which requisitions had been complied with except in the case of A. H. Carner, whose testimony was abandoned, and, the evidence having been completed, the record was sent to the full court.

Delay in the disposition of the case had been occasioned by the death of some of the members of the court and by the resignation of others, which vacancies had to be filled.

After a general review of the evidence, the court went on to say:

At the head of those judicial facts which can be considered classic and primordial for its importance in this suit, stands the contract entered into between the National Government of the United States of Venezuela and Mr. Horatio R. Hamilton, on the 15th of September, 1883, augmented by an article on the

19th day of October of the said year, and further augmented by three articles on the 30th day of May, 1884, and approved by the National Congress by a law passed on the 6th of June of the said year 1884. * * * This contract, therefore, became and continues to be the sole primitive and principal source from which emanated, so to say, the exclusive right for the assignee company to explore, exploit, and export all the natural products of the forests existing in unreclaimed lands of the former State of Bermudez, in the terms of article 1 of the contract; and in the identical way it acquired, in the tenor of article 2, the right to exploit the asphalt in all the territory of the State, but only for the term of twenty-five years, fixed by article 8 of the contract in question, and without the National Government being able within the lapse of that time to grant like concessions as regards the State of Bermudez to any other person.

The court said the idea had been thrown out that the Hamilton contract gave only—

a simple right of preference in the discoveries which they should make of mines or other products on the lands comprised in the contract. Such an interpretation can not be rationally sustained, because in whatever way things are considered in the case before us the result will always be that the Hamilton contract is clothed with all the forms, and engenders all the consequences of a privilege granted to the contractor and to his assigns, in order that they alone, during the prescribed time, might be able to exploit the asphalt and other natural products which should be found in the territory covered by the contract.

The court further declared the contract was in full force, even though the minister of fomento had, on January 4, 1898, declared the same terminated for the company's alleged failure to carry out some of the obligations of the contract. This decree was declared void by the high court on August 23, 1898, and consequently the contract retained its legal effect. The decree aforesaid was rendered on the petition of the attorney for the promoters of "Felicidad," which clearly demonstrated they considered the contract an insuperable bar to the acquirement or exploitation of any mine in contravention to the contract.

The court also said that on December 10, 1900, the minister of fomento issued a decree, wherein the Hamilton contract was construed as one not giving the concessionaire the exclusive right to mine asphalt in the State; that no such monopoly was specified, and it could not be presumed.

The court further said a desire existed to attach great importance to this decree, but it was only an administrative decision of no more value than the former decree of January 4, 1898, issued by the same ministry.

Even admitting the contract was in conflict with the constitution and the mining laws, or that it ought to be rescinded on account of a failure on the part of the contractor to perform the obligations therein assumed, such facts did not alter the judicial effect of the contract, inasmuch as that "collision" or "rescission" had not been declared by competent authority. Therefore, the company was justified in saying the National Government had no right to grant titles to mines in the State to any other person, in contravention of the terms of the contract.

The court then went on to say that under the contract the company had the exclusive right to mine asphalt in the State aforesaid for the term of twenty-five years; that by virtue of article 8 of the contract the Government could not grant title to "Felicidad," or grant mining concessions to any person in contravention of the terms of the con-

tract; that the contract having been approved by Congress, it acquired the character of a law of the Republic, and created for the term thereof a special situation in the State aforesaid for the exploitation of asphalt and other natural products of the forests, wherein the company alone could exercise the right of exploitation; that the court had jurisdiction over the parties and the subject-matter of the suit; that in view of the reasons heretofore given it was not necessary to decide whether or not Warner & Quinlan were the proper parties plaintiff; that the question of whether or not the mine "Felicidad" and the asphalt lake which the company was exploiting were two distinct properties or one and the same property was immaterial, because whatever might be the situation of the properties the fact remained in that territory no mining concessions for asphalt could be given while the exclusive right of the company, under the contract, remained in force; that the title to "Felicidad" was subject to defects which vitiated it, requisite prescriptions and solemnities prescribed by the Code of Mines had not been complied with, and under article 1279 of the Civil Code these defects could not be amended. For the reasons aforesaid the action was dismissed without any special order as to costs.

And thus ended what may be called the third chapter in the history of the company. In addition to the claimants to "Felicidad" and "Venezuela," other parties had attempted to procure a title to the southern part of the lake, which they designated as the "South Side" mine, and, perhaps, still others had made claim to other parts of the lake. If all these several claims had been allowed the Bermudez Company would have lost all or practically all of the lake. But as a result of this decision these parties apparently abandoned the field, and like the Arabs of old "they folded their tents and silently stole away." The Bermudez Company was left in the exclusive possession of the entire lake; its right thereto, however, was adjudicated by the aforesaid decision to be the Hamilton contract; its land and mining titles were ignored.

GOVERNMENT OF VENEZUELA COMMENCES SUIT AGAINST THE COMPANY.

On July 20, 1904, the attorney-general of Venezuela, Dr. F. Arroyo Parejo, filed a complaint in the high federal and cassation court of Venezuela, which suit had for its purpose the cancellation of the Hamilton contract and the sequestration of its property. This is the suit of which special complaint is now made by the Bermudez Company to the Department of State. It is charged that the suit was a perversion of judicial process, for the purpose of unlawfully confiscating the company's property.

THE GOVERNMENT'S COMPLAINT.

The complaint recited the Hamilton contract and the additional articles thereto, including the one which provided for the canalization of the Guarapiche River, all of which, it was alleged, were approved by Congress on June 6, 1884, and were assigned to the Bermudez Company. The complaint went on to say:

Twenty-one years have elapsed since the above-mentioned company entered upon the enjoyment of the Hamilton concession, and during this long period of time, notwithstanding the *said* concession is one of the most extensive and

19th day of October of the said year, and further augmented by three articles on the 30th day of May, 1884, and approved by the National Congress by a law passed on the 6th of June of the said year 1884. * * * This contract, therefore, became and continues to be the sole primitive and principal source from which emanated, so to say, the exclusive right for the assignee company to explore, exploit, and export all the natural products of the forests existing in unreclaimed lands of the former State of Bermudez, in the terms of article 1 of the contract; and in the identical way it acquired, in the tenor of article 2, the right to exploit the asphalt in all the territory of the State, but only for the term of twenty-five years, fixed by article 8 of the contract in question, and without the National Government being able within the lapse of that time to grant like concessions as regards the State of Bermudez to any other person.

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Twenty-one years have elapsed since the above-mentioned company entered upon the enjoyment of the Hamilton concession, and during this long period of time, notwithstanding the said concession is one of the most extensive and

favored that has been granted by the Government of Venezuela, the said company has restricted itself solely and exclusively to the exploitation of an asphalt lake discovered within the territory of the State of Bermudez, neglecting entirely to fulfill the other obligations stipulated in the contract. There is no doubt that the company has thought that the exclusive exploitation of the asphalt, which offers greater facilities and produces more enticing returns than that of other natural products, was a convenient way of executing the contract; but this singular judgment can not be shared by the Government, who sees one of the most productive branches of the national wealth rendered unprofitable, to the evident damage of the public interests. As a matter of fact, the exploitation of the natural products of the State of Bermudez other than asphalt has remained stationary for upward of twenty years, and the Government finds it impossible to activate it on account of its obligation toward the company. Such a situation has become unbearable.

This complaint was more in the nature of an argument than a statement of facts. It alleged that the company could not contend that the exploitation of natural products to which the contract related was simply a right which it could renounce at will. Such an interpretation gave to one party all the benefits and imposed upon the other all the burdens. Every right was the correlative of an obligation.

The purpose of the Government by this contract was to promote the progress of the State by all the means incident to a great enterprise. The company had rendered this purpose nugatory, and had ignored its obligations.

Furthermore, the exploitation of asphalt had been conducted on so small a scale that the returns to the Government therefrom had been ludicrously small.

The company had not canalized any of the rivers in the State, an improvement agreed upon in the contract.

Therefore, pursuant to instructions, he brought this suit against the company for the dissolution of the contract; for the recovery of damages incurred by reason of its failure to execute the contract, "according to the just finding of appraisers, and calculated in accordance with the basis established *by the first additional article*," and for costs, etc.

The complaint further alleged: As the contract was a lease, "*the subject-matter of which is the enjoyment of all the natural products existing on the wild lands of the former State of Bermudez*, and from the instrument of proof and telegram which I annex it is clearly demonstrated that the lessee has omitted to make improvements which by the contract it is bound to make, such as the canalization of the rivers of the State, in conformity with the seventh clause of article 373 of the Code of Civil Procedure, I move for a decree of sequestration of the mine which the company exploits at the place called Guanoco, together with all the apparatus and appurtenances of the exploitation, to answer the result of this suit," etc.

Exhibits to bill of complaint.—The exhibits attached to or filed with the complaint, which the attorney-general said clearly demonstrated the company had failed to make the "improvements" called for by the contract, were a telegram and three depositions, or ex parte affidavits.

R. Velasquez's telegram.—The telegram was from one R. Velasquez to Dr. Lucio Baldo, the minister of the interior, dated April 22, 1904, wherein Velasquez said that "on trustworthy information" he would

say the company had not canalized any rivers or exported any natural products other than asphalt.

Llamoza's affidavit.—The first affidavit was that of one Thomas C. Llamoza, which was to the effect that he had been at Guanoco, where the company's works were located; that from such place to Maturin transportation by water was effected by canoes. Vessels of a deeper draft could not be used, which proved to him the river Guarapiche had not been canalized.

Jiminez's affidavit.—Next was the affidavit of German Jiminez. He said he was at Guanoco in October, 1900. In the rivers leading to that place he saw no signs of canalization; as to the river Guarapiche he knew nothing.

Ponce's affidavit.—Next was the affidavit of Dr. M. A. Ponce, formerly an attorney for the Bermudez Company. He said he had visited Guanoco several times. He generally went there from Trinidad on the company's steamers. The rivers navigated on such journeys were of their natural depth and width. On the Cano Colorado and Guarapiche steamers could go only a short distance up the former, then had to anchor and send small boats up to the custom-house; and up to Maturin the only navigation was by "lighters" or small crafts propelled by poles, etc. Therefore he asserted there had been no canalization.

Reference to judge of first instance.—On the same day the complaint was filed the case was referred to the president of the court, who acted as the judge of first instance or judge of examination.

Order that summons issue.—On the next day, July 21, the judge of examination received the record, and ordered that a summons be issued for the Bermudez Company, and that it be served on its local representative.

Carner suggested as receiver.—On this same day the attorney-general appeared and suggested to the judge that if the sequestration prayed for was ordered, Ambrose H. Carner, a resident of Caracas, be appointed receiver, and that a commission to execute the order be issued to the civil judge of Cumana.

SEQUESTRATION OF COMPANY'S PROPERTY ORDERED—A. H. CARNER APPOINTED RECEIVER.

On the same day the judge entered an order of sequestration, wherein he said he found that the "*extreme circumstances*" required by law, as specified in article 373 of the Code of Civil Procedure, had been fully proven. Ambrose H. Carner was appointed receiver, and a citation for him was ordered. The civil judge of Cumana was ordered to execute the order of sequestration.

CARNER SWORN IN AS RECEIVER.

On the next day, July 22, at 9 o'clock in the forenoon, Carner appeared before the judge, accepted the appointment, and was sworn to faithfully discharge the duties of his office.

Commission to civil judge.—On the same day, July 22, a commission was issued to the civil judge of Cumana, wherein was recited the order of sequestration, the appointment of Carner as receiver,

and the civil judge was directed to execute the order of the court and to give Carner possession of the mine, with all its apparatus and accessories.

BERMUDEZ COMPANY SERVED WITH SUMMONS.

On the same day, July 22, the summons issued for the Bermudez Company was returned as served on Robert K. Wright, the resident managing director, at half past 2 o'clock of the afternoon of that day.

THE PROTEST OF THE BERMUDEZ COMPANY.

Appearance of Bermudez Company and petition of R. K. Wright.—And at 4.45 p. m. of the same day Mr. Wright filed a petition with the judge wherein he said he had unexpectedly learned of the commencement of the suit; that he was surprised that on the day previous an order for the sequestration of the company's property had been made and he was still more surprised that A. H. Carner had been appointed receiver.

He asserted that to call the Hamilton contract a lease was a perversion of its terms so as to bring it within the article of the code in reference to leases; the contract was in no sense a lease; the parties thereto never so understood it; the precautionary measure of sequestration ought to be grounded only on an indisputable lease; otherwise any kind of contract could be made the excuse for such a proceeding by simply calling it a lease, and it was of the utmost importance that the question whether or not the contract was a lease should be first decided.

He called attention to article 368 of the code, which provided that the judge may order sequestration; it was, therefore, a remedy to be exercised in the discretion of the judge in deference to justice and impartiality. An immense loss would accrue to the company by the sequestration ordered; no necessity existed therefor, even if it was authorized by law, which is denied. He therefore prayed that the order be reviewed and revoked.

COMPANY'S PROTEST OVERRULED.

On July 25 the judge said that "without entering into details with regard to the arguments connected with the principal affair which is the subject-matter of the suit, and referring only to the said incident, maintains the proceedings instituted on the 21st instant, already mentioned, finding that the grounds on which it was based still exist."

Petition for rule when to file answer.—On the same day the attorney for the company petitioned the judge and said that between Caracas and Guanoco there was no telegraph or other means of prompt communication; that the company, at its office in Caracas, would not know for many days or weeks when the writ of sequestration was executed; that the code required the answer to a sequestration proceeding should be made on the third day after the execution of the writ, and he asked the court to fix a time when such answer should be filed.

On the following day the court, in order to preserve the rights of both parties, ordered that as soon as knowledge of the sequestration came to the court the company should be notified.

On July 22 the commission to the civil judge of Cumana to execute the writ of sequestration was issued. This commission was received by the civil judge on July 24, apparently having been delivered by Mr. Carner. The civil judge aforesaid entered an order wherein it was stated that the writ would be "executed in the most exact and expeditious manner;" that the tribunal would "constitute itself" at each of the places which might be necessary to give possession to the receiver, and that the support of the public troops would be requested if circumstances required.

EXECUTION OF ORDER OF SEQUESTRATION.

It is reported, and not denied, that the civil judge aforesaid, Mr. Carner, and the fiscal or assistant attorney-general, with a detachment of troops, embarked in a Government gunboat and sailed to Guanoco. They arrived there on July 28. A record of the proceedings was made by the civil judge. It is asserted by the representatives of the company that the full details of what occurred, the acts of aggression committed, the violence threatened, and the arrests made are not stated in this record.

It is undoubtedly true the officers of the Government arrived at Guanoco with a great show of force. Aside from the guns on the ship, there was an armed military force. The representatives of the company in charge of its property were taken by surprise and completely overawed. The latter complain they were treated with violence and subjected to various indignities by the troops. The officials of the Government deny this charge. They admit they went there with armed force; they expected resistance from the employees of the company, and they were prepared to meet it; but, they assert, no resistance was offered, no force was necessary or employed, and the proceedings were conducted in a peaceable manner.

The record kept by the civil judge shows that Mr. Bartlett, the company's superintendent in charge, declared he delivered the property to Mr. Carner, as receiver, in obedience to the judicial mandate, and by reason of the military force brought there by the gunboat *Bolivar*. The record further says the military force was present only to support the judicial authority in case of a disturbance, but everything was done without violence. This record was signed by the judge, by Mr. Carner, Mr. Bartlett, the superintendent, and by F. J. Holdern.

The officers then proceeded to take an inventory of the property seized. It included office furniture of all kinds, account books, $470 in English money, small sums in Venezuelan money, household furniture, provisions and food supplies, tools, implements, hardware, machines, manufacturing supplies, engine tools and supplies, horses, mules, railroad and equipment, crude asphalt, houses, buildings, wharves, etc. The taking of this inventory commenced on July 28, and continued from day to day until and including August 3. In the inventory great emphasis was laid on the bad condition of the properties, especially the railroad equipment, wharves, etc.

Protest of the company.—On August 25 Mr. Wright, the company's local managing director, filed a protest with the judge of first instance, in which he complained that the judge had sent the commission for the execution of the writ of sequestration to the local civil

judge at Cumana by Mr. Carner, instead of sending the same by mail, as required by article 237 of the code, and the record did not show the appointment of Carner as a messenger, all of which indicated not only undue haste, but irregularity in procedure.

Also, it was a matter of public notoriety that the man-of-war *Bolivar* returned from its trip to Guanoco in the first part of August with the officers who went with Carner to execute the writ; that some of such officers had since then been in Caracas, but no report of the sequestration had been made.

Also, it had come to his knowledge by correspondence with Mr. Bartlett, the superintendent at the mine, that Mr. Carner, accompanied by the civil judge of Cumana, the national fiscal, and an armed military force had taken possession of the property of the company in a "military manner;" that the cashier was not permitted to pay the workmen and employees the wages and salaries due them: that the civil judge reluctantly accepted a protest from Bartlett, and afterwards refused to give Bartlett a certified copy thereof.

He called special attention to the fact that the steamer *Kennett* sailed from Port of Spain on August 21, chartered for a load of asphalt to be received at Guanaco.

And he protested in the name of the company against all the foregoing acts, which had caused immense damage to the company.

BERMUDEZ COMPANY'S ANSWER IN SEQUESTRATION PROCEEDING.

Mr. Wright also filed another document in the nature of a protest or answer to the sequestration proceeding, which seems to have been filed with the preceding protest, or entered at the same time. It was dated August —, 1905. In this document he objected to the sequestration which had been decreed without notice to the company, and he denied both the law and the facts adduced as ground for the same. Even if the Hamilton contract was a lease, the proof furnished by the exhibits to the complaint was not sufficient to justify the order of sequestration.

The alleged obligation to canalize rivers, if it ever existed, was in the alternative—that is, to canalize one or more rivers, or to build a railroad—and the obligation had been fulfilled by constructing a railroad, which was then the subject of sequestration.

If it was not an alternative, but only a single obligation, it had been fulfilled as far as it was possible to do so; beyond that no obligation extended.

On the other hand, the company solemnly asserted the asphalt lake, lands, and appurtenances—

> *do not belong to it by virtue of the so-called Hamilton contract*, which is the subject-matter of this suit, but by virtue of titles, which were legally granted to it by the national executive powers of Venezuela on the 7th and 14th of December, 1888. * * * and, although it is true that the remote occasion of those titles was the contract now under discussion, it is not less true they also have their immediate judicial causes which are proper and peculiar to them, *these being titles which have never been discussed, and are not susceptible of discussion, in the present suit.*

A protest was made against the appointment of Mr. Carner as receiver because he was the company's notorious enemy and was hostile to its interests.

The petitioner prayed that the decree of sequestration might be revoked. The right of the company to demand damages for the immense losses incurred was reserved.

It should be here noted that two issues were made in this case: One on the sequestration proceeding, and one on what was termed the main issue. The first involved the question whether or not the Hamilton contract was a lease, and, if it was a lease, whether or not the facts justified the sequestration. The second issue involved the question whether or not the Government was entitled to a judgment canceling the contract. As the first issue was first tried, I will follow it to a conclusion.

Receiver's report.—On September 19 Mr. Carner, as receiver, made his first report. He entered upon a minute description of the physical condition of the property, which he said was very bad, particularly the railroad and wharves.

The former was 5.3 miles long and had a 3-foot gauge. The ties were rotten and buried in the mud. Locomotives and cars were out of repair, likewise the buildings and the wharves were rotting down. A large expenditure for repairs was necessary. The sanitary conditions were also bad, drains filled up, etc., and the health of all employees was thereby endangered. He found about 200 workmen employed, most of them digging asphalt. There was a shortage of provisions, scarcely six days' supply on hand. He discharged about 60 men, but it was necessary to get supplies for the balance. The only source of supplies was Trinidad, many miles distant. He secured a steamboat and sent it for supplies. He organized his working force and began digging asphalt. He had as yet made no sales, but he was on good terms with purchasers in Europe and the United States, and he soon made arrangements to place some shipments, delivered on board at Guanoco. The steamer *Kennett* arrived at Guanoco for a load of asphalt on the 23d of the preceding month (August) and sailed on September 8.

As this happened at the beginning of the second month of his administration the account of this shipment would appear in his next month's report. He sold the asphalt f. o. b. Guanoco at $5 per ton, the same price at which the Bermudez Company had sold asphalt for many years, according to his books. He was trying to sell 3,000 tons more. He attached itemized account of disbursements from July 22 to August 31.

EVIDENCE IN SEQUESTRATION PROCEEDINGS.

On September 22 the hearing on the sequestration issue began before the judge of examination:

The Government offered in evidence:

1. An auditor's certificate, dated September 22, 1904, to the effect that the Bermudez Company had, "from its foundation," paid into the national treasury 2 bolivars for each 999½ kilograms of asphalt it had exported; and had during all of that time imported free of duty material and tools used in the exploitation of the same.

Just what the purpose of introducing this certificate in evidence was I do not know. It was probably to show that although the company had, in its answer in this sequestration proceeding, denied that

the lake, lands, etc., belonged to it "by virtue of the so-called Hamilton contract," nevertheless the company had, "from its foundation," paid the export duties prescribed by the contract, and had continuously availed itself of the exemption from import duties thereby granted; and these facts justified the conclusion that it held the mine and lands and operated the same under the contract.

2. The Official Gazette, No. 9065, January 29, 1904, contained the decision and opinion of the Federal court rendered in the case of Warner et al. *v.* Bermudez Company.

This decision also affirmed the validity and continued existence of the Hamilton contract; and further decided that during the term thereof no land or mining titles could be granted in contravention thereto.

3. On the 26th of September the Government introduced as witnesses Messrs. Llamoza and Ponce; they were two of the parties whose affidavits were filed with the complaint. They ratified their former statements. Doctor Bance, the attorney for the defendant company, was called as a witness by the Government, by whom it was sought to be proved that the company paid the Government the duties on exports of asphalt prescribed by the Hamilton contract, and imported free of duty materials used in the exploitation of asphalt; but Doctor Bance had no personal knowledge of the details of the business.

The foregoing witnesses, Llamoza and Ponce, were the only ones who assumed to testify to anything on either side. Their testimony was directed solely to the question of canalization of rivers. It was negative in character and of little weight. At best, it only tended to show there had been no canalization of rivers. But, as the defense offered no proof, the Government was entitled to the benefit of whatever reasonable deductions this evidence justified.

ATTORNEY-GENERAL'S ARGUMENT.

At the conclusion of the evidence, the sequestration issue was argued by both sides. The attorney-general contended the Hamilton contract was a lease, for the following reasons: 1. At the time it was made the authority of the Government over wild lands was limited to that of administration. It had authority to lease lands for a limited term, but had no authority to alienate them except by the methods prescribed in the law of wild lands, which had not been observed in this instance. 2. The contract possessed the characteristics of a lease, viz, limited term, obligations to be performed, and a prescribed compensation. If not classified as a lease under the law, it was closely analogous thereto, and the rules of law applicable to such analogous contracts, in the absence of other special regulations, should be applied thereto.

The company, he said, contended that even if the obligation to canalize rivers existed, it was in the alternative; that is, to canalize rivers or to build a railroad, and that the company had complied with the latter condition. This interpretation he denied. There was a positive obligation to canalize one or more rivers, commencing with the Cano Colorado and the Guarapiche. For such work the exclusive right to navigate the rivers canalized, or to impose a tax on vessels navigating them, was granted. While the contract said Hamilton

should have the same right if he constructed a railroad, the latter was not an alternative obligation. There was no obligation to build a railroad; it was as optional with Hamilton to do so or not; but the obligation to canalize rivers was positively declared and expressly assumed.

The company, he further said, had not proven there were any technical difficulties in the way of canalizing the rivers; which was the only way it could be released from the obligation. And this improvement provided for in the contract not having been made, the right to a decree of sequestration, as provided in No. 7, article 373, of the Code of Civil Procedure, accrued to the Government.

He further said that the protest against Mr. Carner was groundless. He was appointed because he was an American and because of his well-known competency to care for the property placed in his hands.

Provisions of the code.—The sections of the Code of Civil Procedure upon which the attorney-general relied for the right of sequestration are as follows:

ARTICLE 373. Sequestration shall be decreed:

* * * * * * *

7th. Of the property leased, if the defendant is sued for default in payment of rental; on account of the property becoming deteriorated; or on account of having failed to make improvements to which he is bound by the contract; provided any of the circumstances be proved in the manner indicated in article 368.

In this case the owner, and the purchaser in the case mentioned in number five, may demand an order that they themselves be named repositary, and the property shall remain subject to answer the lessee or purchaser when necessary.

ARTICLE 368. At any stage or epoch of the cause whatsoever, if there is proof of the right sued for, although it may be by deposition of witnesses, when this proof is admissible according to the Civil Code, any of the parties may request, according to the case, and the judge may grant:

1. Prohibition to alienate the subject-matter of the suit.
2. The sequestration of determinate properties.
3. Deposit of security, and in default thereof the attachment of sufficient property.

ARGUMENT FOR THE BERMUDEZ COMPANY.

Doctor Bance, attorney for the Bermudez Company, argued in substance as follows:

The several articles in the code referred to and relied upon by the attorney-general only authorized sequestration in a case where there had been a lease previously established as a basis for the order. The Hamilton contract was not a lease in form or in meaning and had never been so interpreted by the parties.

Assuming the contract to be a lease the sequestration of the asphalt mine was not authorized because according to the complaint the subject of the lease was "the enjoyment of all natural products of the unappropriated land" of the State of Bermudez, which was equivalent to saying the object of the lease was a usufruct, while the subject itself and the rights of the possessor had been embargoed.

If the subject-matter of the lease was a usufruct, the canalization of rivers could not be considered an improvement thereon. The reason for a sequestration is to prevent damages to the possession in the hands of the defendant. In the present case, from the nature of the property, no such damage could be presumed.

The evidence on which the sequestration was asked for was not sufficient. The witnesses by whom the noncanalization of rivers was sought to be proved had no special knowledge of the subject and had no opportunity to be informed thereon.

The company was never bound by the contract to canalize rivers. The article referring to canalization was never approved by Congress, as appeared by the publication of the Hamilton contract in the Official Gazette, No. 3300, July 21, 1884.

Assuming the foregoing " unrefutable, powerful, and decisive argument " had no value, sequestration could not have been justified without deciding a point involved in the main issue—the judicial nature of the contract.

Finally, " the company is in possession of the sequestrated asphalt mine *by right of titles which have not and can not be discussed in the present suit*," which referred exclusively to the Hamilton contract.

DECISION OF JUDGE OF FIRST INSTANCE.

On October 4, 1904, the judge of first instance rendered his decision in an opinion which recited the evidence and pleadings, and then said:

It was true that, to determine the nature of some contracts, the intent of the parties and the interpretation thereof given by them should be taken into consideration; but such a rule should not be carried so far as to allow contracts to lose the character given them by law.

Taking into consideration the nature of the contract in question, also that the Government in agreeing thereto could only act in an administrative capacity, it followed that the contract must be classed by the law among those of limited duration of a burdensome nature and with a fixed compensation stipulated therein.

To discuss the nature of the contract was not to prejudice the main issue in the suit, which was whether or not the contract should be annulled.

In the course of this proceeding the defendant *had not produced any evidence in its favor*, therefore the reasons on which the sequestration was ordered remained in force and the former decree was affirmed.

APPEAL TAKEN FROM ORDER OF SEQUESTRATION.

On October 5, 1904, the company appealed from the decision, the appeal was granted, and the record was ordered to be certified.

Appeal in high federal court.—On November 9, 1904, the appeal came up before the high federal and cassation court.

Inhibition of Doctor Paul.—Dr. J. de J. Paul, one of the judges and the vice-president of the court, announced he was disqualified, in his judgment, to sit as a judge in the case, because he was one of the attorneys for Warner & Quinlan in their suit against the company. In that case the land and mining titles of the company and the proper interpretation of the Hamilton contract were questions involved, and those questions also related to the subject of the appeal then before the court. Under the circumstances he thought it his duty to withdraw from the hearing of the appeal.

DECLARATION OF COMPANY'S ATTORNEY THAT LAND AND MINING TITLES WERE NOT INVOLVED.

Doctor Bance, the attorney for the company, took exceptions to the statement of Doctor Paul. He said the issues in the Warner & Quinlan suit solely involved the title to the mine "Felicidad," and in the case at bar "the mining title issued to the New York and Bermudez Company, which gives it exclusive ownership over the lake of asphalt, *is not a title which is discussed, or which can be the subject of discussion, in the incident of sequestration, or in the principal suit upon which said incident depends.*

Leon's inhibition as a judge.—Doctor Paul, however, withdrew from the case, and a substitute judge was called in his place. No exceptions can be taken to the manner of his withdrawal or to the reasons assigned therefor.

Dr. Carlos Leon, one of the judges, also announced his withdrawal from the case. This was proper enough, for he evidently was prejudiced against the company. He had been its counsel for many years, but he abruptly withdrew from the Warner & Quinlan case, because, as he said, the company would not pay his fees in addition to his regular monthly salary. He sued the company for such fees, and the court to which he appealed decided against him. He had, then, a grievance, real or supposed, against the company, and he manifested a disposition to prejudge the case and to prejudice his fellow-members of the court by the manner of his withdrawal from the consideration of this appeal.

He made a statement in which he said he was the company's counsel when the Executive decree of January 4, 1898, canceling the Hamilton contract because of a failure to comply with its obligations was published. He, as counsel for the company, applied to this same court to have that decree set aside. And at the same time he "informed the company of the advisability of entering into a compromise with the National Government in order to avoid liabilities to which the nonfulfilment of the contract might give rise."

This was probably true, and it may have been good advice, but this was not the proper time to say so. It was, in effect, an expression of opinion on the merits of the case and the unwarranted injection of his testimony into the record.

Argument of counsel.—The attorney-general seems to have made no argument on the hearing of this appeal. His argument before the judge of first instance was in the record. He contented himself therewith.

ARGUMENT OF BERMUDEZ COMPANY ON APPEAL IN THE SEQUESTRATION ISSUE.

Doctor Bance made a long written argument. It may be summarized as follows: The judge of first instance had said, because the contract in question had "a limited durability, an onerous character, and contained stipulations about a fixed price," it had the characteristics of a lease. The same characteristics applied to notes, mortgages, contracts for freight, exchange, transportation, etc., all of which, according to the decision of the judge, might be termed leases if occasion required. The statement that by confirming the sequestra-

tion the judge of first instance did not prejudice the issue in the main suit was also unsound. The fact the defendant had offered no evidence was not significant, because the evidence of the plaintiff was insufficient to maintain the suit.

He then entered upon a long argument wherein he attacked the organic law of the court which allowed the judge of first instance to decide cases. It should be noted that the court had been reorganized by Congress since the Warner & Quinlan suit was decided. The new law specially authorized the judge of first instance to decide cases and all preliminary questions arising therein. This law, the counsel asserted, was unconstitutional, and most of his argument was directed to this point. Aside from this, nothing new was brought out in the argument.

DECISION OF COURT ON THE SEQUESTRATION ISSUE.

On February 15, 1905, the court handed down its opinion. It recited with great detail every step taken, every pleading filed, the evidence produced, and every order made in the case. It decided that the judge of first instance had authority under the new organic law of the court to order sequestration; that the law authorizing the judge to decide cases was regulatory in its nature and was not in conflict with the constitution.

Also, the failure of the judge to give reasons upon which he based the order of sequestration was not an error sufficient to vitiate the order. In declaring the formalities of the law had been complied with he gave sufficient reasons. The rule that a failure to give reasons for a judgment was an inherent vice applied only to final judgments and not to interlocutory orders such as this one was.

While parties were at liberty to enter into contracts, it was only contracts authorized by law that created juridical ties and had the force of law. The intent of the parties and their construction of a contract were not the only means of interpretation.

In the present case the power of the Government limited to that of administration, as provided in section 15, article 13, of the cons[illegible] tution, the subject-matter of the contract, its duration, and sti[illegible] tion for payment, furnished data sufficient to determine the [illegible] of the contract. It is not to be presumed the Government int[illegible] alienate or convey; to have done so would have been contra[illegible]

The judge of first instance acted in accordance with t[illegible] taking such circumstances into consideration. H[illegible] fied in his estimation of the evidence upon which [illegible] Article 368 of the Code of Civil Procedure pro[illegible] tion may be ordered "at any stage and grade [illegible] claimed is established, even though it be[illegible] witnesses, when such evidence is admis[illegible] Code;" and in this case such evidenc[illegible] finally observed the company did no[illegible] sition. For the reasons aforesaid [illegible]

This branch of the case ha[illegible] foregoing decision, the cas[illegible] stance for a hearing on wh[illegible] right of the Governmen[illegible]

ANSWER OF COMPANY ON MAIN ISSUE—CANCELLATION OF CONTRACT.

In the main issue the defendant company had filed its answer on August —, 1904. The answer is a lengthy one and is more in the nature of an argument on the interpretation of the Hamilton contract than a statement of facts. This style of pleading seems to prevail in the courts of Venezuela.

The defendant denied all the allegations in the complaint, including both statements of fact and conclusions of law.

The contract was not a lease; the parties never intended it to be a lease or so construed it. Its stipulations can not be adapted to the rules or consequences of a lease, either in form or substance.

The rights granted to Hamilton were all optional, except that of exploration; consequently they could be renounced. It was hypothetical whether any of those rights, except that of exploration, would be exercised, because neither of the parties knew, when the contract was made, whether Hamilton would find exploitable products or, if he did find them, whether it would be convenient or advantageous to him to exploit them.

The argument that such a construction of the contract imposed all the burdens on one party and gave all the advantages to the other was not sufficient to overcome the express terms of the contract. If the favored party derived greater profit than the other, it was due either to the former's superior foresight in making the contract, or to his labor and sacrifice in exploiting the business, or to a situation which favored him by reason of its uncertainty when the contract was made.

The company had performed all of its obligations, as was fully proved by the official declaration of the minister of fomento, on July 23, 1900, wherein was stated the rights acquired by the company and the preference it had in the preemption of mines and wild lands, which resolution was made on the petition of A. H. Carner and was published in the Official Gazette July 25, 1900, No. 7986.

The default on the part of the company alleged in the complaint was the failure to canalize rivers and to exploit wood and other natural products, except asphalt. But, by the contract, no time was fixed when such exploitation should commence. From their nature time was required to execute them. They could not be considered obligations demandable until judicial authority had fixed a term for their performance and that term had elapsed.

These alleged obligations, even if their performance should have commenced when the contract was made, were personal obligations, and engendered personal actions. Twenty-one years had elapsed since they accrued, and the company pleaded the limitations prescribed by the Civil Code.

The obligation to canalize rivers was alternative with building a railroad. The company built a railroad; therefore it had discharged the obligation.

On the other hand, the asphalt lake and lands, which the company holds in Guanoco, etc., "*do not belong to it* by virtue of the so-called Hamilton contract, which is the subject-matter of this suit," but by virtue of titles granted to it by the Government on December 7 and 14, 1888, which were recorded, etc. It was true the remote occasion of those titles was the Hamilton contract. It was no less true they had their immediate causes which were peculiar to them, "*these being*

titles which have never been questioned, and are not susceptible of question in the present suit."

The allegation that the Government in making this contract proposed thereby to foster the progress of the State, but that the exploitation of natural products, other than asphalt, had been dormant for twenty years, and the Government found it impossible to develop it, because of this contract, was groundless; because neither of the parties to the contract counted on enormous capital, or indulged in any such illusions. The Government had already granted an infinite number of mining and wild-land titles in the aforesaid State since making the Hamilton contract, as the records, both Federal and State, would abundantly show.

The company summoned Horatio R. Hamilton, then residing at Habana, Cuba, as the grantee in the contract, to make good and to indemnify the company as to his undertakings in the contract.

Wherefore defendant prayed the action should be dismissed.

EVIDENCE ON HEARING OF MAIN ISSUE.

Upon the hearing of this case the Government introduced a large amount of evidence, consisting of documents, testimony of witnesses, etc.

The documentary evidence largely consisted of letters from Hamilton and from the company to the minister of fomento, written soon after the company was organized and began work under the contract, also custom-house reports as to exportations of wood and asphalt, and as to importation by the company, free of duty, of material, machinery, and supplies.

Letters from citizens of the State of Bermudez, addressed to the minister of fomento, and resolutions of various municipal councils in the State of Bermudez were also introduced. These resolutions and letters were all dated in 1898, and were evidently sent to the President of the Republic as expressions on the part of the inhabitants of hostility to the company. They were protests against the revocation of the decree of January 4, 1898, issued by President Crespo, canceling the Hamilton contract for nonperformance of the obligations thereof, which decree the high Federal court, as hereinbefore stated, afterwards set aside.

These resolutions and letters were all of the same tenor and effect, viz, that the company had canalized no rivers; had exploited no natural products of the forests, and would not allow others to do so; it had broken its contract; now that the contract was canceled a new industrial life would come to the State, etc.; and the action of the President in canceling the contract was highly commended.

This so-called evidence was certainly inadmissible under any rule of evidence known to the courts of our country. They were ex parte declarations made years before the suit in question was begun; they showed no actual knowledge of the facts therein asserted; and they were evidently adopted in obedience to official instructions or as the result of a propaganda carried on against the company by some adverse party in interest. But they were admitted in evidence without objection on the part of the defendant company, and no complaint thereto can now be sustained.

The depositions of many witnesses from different parts of the State of Bermudez were read in evidence, which were taken under

letters interrogatory regularly issued. Some of these depositions abounded in expressions of opinion, conclusions of fact, hearsay statements, etc., and most of them related to the early shipments of asphalt and to the vessels in which such shipments were made. No objection was made to these depositions or to the hearsay statements therein made, no question of competency or materiality was raised, and everything offered in evidence by either side was admitted in the most liberal way.

Report of engineers.—The commission of engineers appointed by the court made a report on December 17, 1904. They said they visited the rivers Cano Colorado and Guarapiche. They stated, what I understand to be the fact, these two rivers are really one river. It empties into the St. Francis River. From this point of confluence up to a little town called Cano Colorado the river is called by the latter name; from there on to Maturin, and up to its headwaters, it is called the Guarapiche.

These engineers reported they had surveyed the river from its confluence with the St. Francis up to Maturin. They found no indications of any canalization ever having been done. The river was in a primitive state; wherefore they were able to say no canalization had ever been done, as required by the additional articles to the Hamilton contract.

Defendant's evidence.—The evidence of the defendant was slight and of little or no consequence. Some depositions of witnesses, residents of the locality where the asphalt lake is located, were taken and read, which tended to show that Hamilton, soon after the company commenced work, appointed agents in different parts of the State. Some of these agents made contracts for the company for cutting wood, furnishing supplies, etc.

A contract was introduced dated February 12, 1886, between the company and one Cornelius F. O'Brien, wherein the latter agreed to cut wood of various kinds for the company.

The depositions of several witnesses were read, which were to the effect that in the years 1886, 1887, and 1888 the company exported to Trinidad wood of different kinds, such as railroad ties, mahogany, rosewood, red mangle, campeche, red cedar, leopard wood, etc.

A report from Hamilton to the company was identified and read. This report was not dated, but it was evidently written in the beginning of the company's operations. It was an extended résumé of the work done and in progress and of the exploration made. It throws some light on the issues in this case, and further reference thereto will be hereafter made.

The foregoing was substantially all the evidence offered by either side. The argument of counsel then followed. Much of the argument on both sides was taken up with the discussion of the organization of the court and the jurisdiction of the judge of first instance.

ARGUMENT OF ATTORNEY FOR BERMUDEZ COMPANY.

The attorney for the defendant opened his argument with the statement that the subject of discussion was necessarily one of law; the unpleasant task of discussing disputed facts was unnecessary.

A large part of his argument was addressed to the question whether or not the Hamilton contract was a lease. He contended this question was not properly debatable in the sequestration proceeding, though it had been therein incidentally referred to. The judgment of the court in that instance was not, therefore, conclusive; the question was still open for debate and final decision.

The section of the code on which the attorney-general relied as authority for sequestration authorized the sequestration of the thing leased, while in this case property had been seized which was in no sense the subject of the lease.

He said the Hamilton contract simply gave him the privilege to explore the wild lands of the State of Bermudez. If he found natural products which could be used for industrial purposes and with commercial advantage to him, he could, if he saw fit, so use them by paying the prescribed tax thereon. If he failed to make explorations within six months, he lost the contract.

He said article 1487 of the Civil Code of 1881 defined a lease as follows:

> A lease of things is a contract in which one of the parties binds himself to cause the other party to enjoy a certain thing for a certain time, in consideration of a fixed price, which the latter binds himself to pay.

Therefore the obligation of the lessor was to deliver the thing leased to the lessee. In this case the Government never delivered wild lands to Hamilton or to the company. Neither the national nor the State authorities knew what wild lands existed in that territory. An effort had frequently been made by different administrations to distinguish wild lands from private lands for the purpose of taxation, but without success. The mere delivery of a lease or a deed was not sufficient; no lands were described, no boundaries were given, or other identification made.

An incident to a lease was an obligation to maintain the lessee in the quiet enjoyment of the leased property. But on this case both federal and State authorities had freely sold the wild lands and the natural products thereof, and had granted mining concessions, etc., all in the State of Bermudez, without reference to or respect for the Hamilton contract, as evidenced by official gazettes, public registries, compilations of laws, decrees, etc.

The determination of a rental to be paid was a necessary element of a lease. In this case no fixed rental was prescribed. It could not have been known whether any of the products named in the contract could be found Suppose neither asphalt, wood, nor any of the other enumerated natural products had been found; or, if found, suppose they were of such bad quality or the expense of getting them to market was so great that they could not be marketed; yet Hamilton or his assignee could have taken from these lands parasites, vegetable woods, textile, or other industrial fibers, not enumerated in the contract but comprehended in the term "natural products," for the full term of twenty-five years and would not have been liable to pay any duty thereon, because the contract specified no duty therefor. In such a case the rental named in this contract would disappear. In fact the contract provided for no rental; the amounts to be paid were taxes.

According to article 1489 of the Civil Code of 1881, real estate could not be leased for more than fifteen years. The term of this contract was twenty-five years; and on July 23, 1900, seventeen years after this contract was made, the minister of fomento in a decree declared the contract was still in force and the company could exercise all the rights therein granted at any time within the term thereof. The aforesaid minister was now a member of the court.

The agreement was of uncertain realization in its inception. The purpose of the Government was to have the region in question explored. If valuable natural products were found and could be profitably developed, they would furnish a source of wealth after the twenty-five years expired. The enterprises thus started would attract population, excite industrial movement, make opening of ways of communication necessary, increase importations, also the receipts of the treasury.

The attorney-general said these benefits have not been realized. If that was true, it was due to the insecure nature of the contract; to the difficulties incident to the development of the products, except asphalt, which made them too costly; to well-known political conditions, and to the fact the company was not bound to develop industries which were not profitable. Hamilton, in effect, said: "If I find natural products, the development of which is profitable to me, I will develop them, but not beyond the term of twenty-five years."

The decree of the minister of fomento of July 23, 1900, was recited in full and relied upon as an acknowledgment by the Government of the fulfillment of the contract and of the continuance of the company's rights thereunder.

If the obligation to channel rivers ever really existed, then the contract specified no time in which the work was to begin. The six months' period applied only to the explorations that were to be made. When they were finished, the company was then free to select the branch of the work it found most expedient and profitable.

But the contract to channel rivers never existed. The additional article providing therefor was never approved by Congress, a requisite essential to the creation of a binding contract. To meet this objection the attorney-general referred to the yearbook of the minister of fomento, which was reported to Congress in 1885, which contained a résumé of executive transactions performed through the medium of his department in the years 1884 and 1885 and in which a reference was made to the additional articles of May 30, 1884, entered into with Hamilton, in reference to channeling rivers. Congress passed a general resolution approving this omnibus report. And this, the attorney-general claimed, was a sufficient ratification of the additional articles aforesaid.

It was admitted the original Hamilton contract was submitted to Congress; that the latter body took action thereon in the way of a formal legislative enactment, which gave the contract the force and effect of a public law. But the resolution referred to had none of the characteristics of a legal enactment, it was not adopted in the manner prescribed by the constitution for the enactment of laws, and therefore never received the approval by Congress necessary to make it a binding obligation.

ARGUMENT OF ATTORNEY-GENERAL.

The attorney-general in his argument said the question whether or not the Hamilton contract was a lease had already been discussed in the sequestration proceeding and the court had passed thereon. At the same time he deemed it proper to offer some further reasons which supported him in making this classification of the contract.

There was a political reason to be considered, and that was the incapacity of the National Government when dealing with wild lands and their natural products to make any other kind of a contract than a lease. The Government was, and still is, simply an administrator of the wild lands, the ownership of which is vested in the several States of the Federation. It could not, therefore, be presumed the intention of the Government was to violate the constitution or to execute a contract not authorized thereby.

He repeated his former statement as to the characteristics of the contract which identified it with a lease. Under the constitution in force at the time the contract was made there were no export duties. The fact that Hamilton agreed to pay duties on the products exported could be considered only as a means of measuring the compensation to be paid to the Government as lessor.

He denied that the characterization of the contract as a lease had been done in an arbitrary manner or for the purpose of obtaining sequestration. He had applied to the contract, in denominating it a lease, only the ordinary principles and rules of interpretation universally recognized by the civil law.

The question aforesaid was, however, of little interest at that time, because the immediate issue before the court was whether or not the company had complied with the terms of its contract, whatever its proper name might be, and whether or not the dissolution thereof should be adjudicated.

It was contended by the defendant that the rights granted Hamilton by the contract were optional with him, except that of exploration; that he could renounce any of the privileges granted, because neither of the contracting parties at that time had any assurance that Hamilton, on exploration, would find natural products which could be profitably developed.

The defendant insisted that the contract granted simply rights which involved no corresponding obligations. If this construction was correct, he did not understand why the defendant conceded that the right to explore was obligatory. There was no more obligation in the contract to explore than there was to exploit if the exploration resulted in the discovery of exploitable products. The contract was in every sense a bilateral one. It contained reciprocal obligations which applied generally to all the rights and privileges granted, from the performance of which the Government expected to derive advantages, which were the consideration for the contract. Hamilton bound himself to begin the execution of the contract within a specified time, and such obligation excluded the idea that he was to execute only such parts of the contract as best suited his convenience.

The obligation to channel one or more rivers of the State was a formal obligation on the part of Hamilton, and it had been clearly proved that neither he nor his assigns ever performed the same. To say that the obligation to channel rivers was simply an optional

right conferred upon Hamilton, renounceable at his will, was an absurd interpretation. He was bound to begin the execution of that part of the contract, as well as all other parts, within six months from the date on which the same should be approved by the federal council. The obligation to be performed was not predicated upon any uncertain event; it was not qualified by any conditions and involved no uncertainties, because it was then a well-known fact that the deposit of asphalt existed in the territory named. To show that Hamilton was left free to execute the contract or not, as he saw fit, would bring it within the provision of article 1134 of the civil code then in force, equivalent to article 1107 of the code of 1881, wherein it was stated:

> An obligation contracted under a condition which makes it depend purely on the will of the obligee is null.

The defendant claimed it had fully performed the contract and that such performance was proven by official declaration of the minister of fomento on the 23d of July, 1900, as evidenced by a decree of that minister, wherein it was declared the company had not only performed the contract, but had preferential right to the denunciation of mines and wild lands.

Under the constitution ministers were only the legal organs of the President, and their powers were restricted to such acts as conform to the constitution and laws, and not otherwise.

It does not appear that the minister of fomento made the aforesaid declaration pursuant to any instructions received from the President; nor did the nature of his functions, as prescribed by law, authorize him to make any such declaration. It amounted simply to the expression of a personal opinion on the part of that officer and had no other virtue or effect. It was contrary to the facts and did not estop the Government from proving that the contract had never been complied with.

It was contended by the defendant that the contract fixed no time, beyond that of exploration, for beginning the work of channeling rivers and developing the natural products of the wild lands; and a default in that respect could not be maintained until after it had been judicially determined when the performance of the obligations should begin. The reasonable construction of the contract required the company to begin the development of the natural products after sufficient time was allowed for making preliminary exploration; and the obligation to channel rivers was to begin within six months after the approval of the contract by the federal council, unless it was extended, in the discretion of the Government.

The defendant claimed that if the execution of the obligations of the contract was to begin immediately after the execution of the same, then all the obligations were of a personal nature and generated personal action, which should have been begun for any default within the period of limitations prescribed by the code, to wit, twenty years; and that the plaintiff admitted in the complaint twenty-one years had elapsed since these actions matured.

The plea of limitations had no standing, because the obligations undertaken by Hamilton were continuous ones for the term of twenty-five years. Aside from that, it appeared the Government, at Hamilton's request, granted him an extension of time for beginning the operations, the last of which expired in October, 1886.

When the present action for dissolution was commenced twenty years from the expiration of such extensions had not expired. If the channeling of the Guarapiche River was prevented by insuperable difficulties, the company might absolve itself from such obligation by proving such facts; but no such proof had been offered. The claim that the obligation to channel this river was not legally imposed upon the company was now made for the first time. From the various documents introduced in evidence it was apparent the company, on entering upon the performance of the contract, recognized its obligations in that respect and expressly assumed the same.

The company alleged that the asphalt lake and lands did not belong to it by virtue of the Hamilton contract, but by virtue of titles legally granted to it by the Government on the 7th and 14th days of December, 1888. If the company could show titles other than those conferred on it by the Hamilton contract, the opportunity would arrive to present them, and when it did arrive that would be the time to discuss and judge of their value. In this case the Government asked for the dissolution of the contract, which appeared to be the origin of all the rights and obligations of the company. When the judgment rendered in this case is to be executed, then would be the proper moment to discuss the questions of the alleged titles.

For the present, it was sufficient to observe that the judgment given in the case of Warner et al. against the Bermudez Company declared the Hamilton contract created for twenty-five years a special situation for the development of asphalt and other natural products in the territory named, and that the right of such development was vested solely in the Bermudez Company under the contract in question.

The land and mining titles referred to were originally granted to A. Howard Carner; and therein was a defect which vitiated them, as they were granted in violation of the Hamilton contract, which had the force of a public law. The fact that the titles were vested in Carner was proven by the further fact that it was considered necessary, in order to vest the titles in the Bermudez Company, to have Carner and his wife convey the same to the company.

The right of rescission was always implied in a bilateral contract when one of the parties did not fulfill his obligation. The party in whose favor the obligation existed had the right of election either to compel the other party to perform the contract or to call for its dissolution, with payment of loss and damages incurred. In the present case the Government had proven the failure on the part of the company to perform its obligations; it was therefore the right of the nation to ask for a dissolution of the contract.

When the extent and advantages given by the Hamilton contract were considered, the supposition was justified that the Government had a right to expect the investment of sufficient capital for the development of the enterprises; that the same would result in the material and moral progress desired covered by the concession. But the existence of the contract and the conduct of the company had impeded the development of the natural products of the State other than asphalt.

The defendant might have excused itself from this alleged default, if it had proven that in the territory named there were no natural products, other than asphalt, capable of development, or that their *development* would have been difficult or prejudicial to the interests

of the company. But nothing of that kind had been shown. On the contrary, it appeared that Hamilton and his assignee began the development and exportation of timber, asphalt, and other products; but on discovering that the asphalt promised more profit, it abandoned the fulfilment of the other obligations.

The fact the Government had subsequently granted other concessions in the same territory amounted to nothing because it was not shown that the concessionaires in such cases had done anything toward the execution of the same, because the existence of the Hamilton contract endangered any investment of capital made in that behalf.

DECISION OF JUDGE OF FIRST INSTANCE.

On May 20, 1905, the judge of first instance rendered his decision in a very lengthy opinion, in which he fully reviewed the history of the case. He reviewed the claims or contentions of both parties and the evidence introduced. The substance of the decision may be stated as follows:

The Hamilton contract was bilateral; mutual benefits were therein given and like obligations assumed. The additional articles of October 19, 1883, and May 30, 1884, were made a part of the original contract. They were recognized as such and assumed by the company. The obligations of a contract must be performed. The evidence showed the company had limited its performance to the exploitation of asphalt and had neglected to perform the other obligations assumed by it in the contract.

The certificate of the minister of fomento of July 13, 1900, could not overcome the evidence in the case. Such certificate was not based on facts, as the evidence showed, and could not be invoked to prevent the Government disputing the statements therein made. It was without legal authority; it amounted to no more than an expression of the individual opinion of the minister.

The obligation to canalize rivers was expressly assumed by the company. For that work "*the Government intended to pay by granting him* (Hamilton) the '*exclusive right of navigating the rivers he might canalize.*' " This obligation had not been performed, and was clearly shown by the evidence and admitted by the defendant. The obligation was not in the alternative, which could be satisfied by building a railroad. If the company had built a railroad, it would have had the same exclusive right to charge for the traffic thereon; but it would not be thereby released from its obligation to canalize rivers or have acquired any right to navigation thereon.

The issue before the court was whether or not the contract should be canceled. In the consideration of that question it was immaterial whether the contract was a lease or not. A lease was a contract wherein one of the parties granted to the other the right to enjoy a thing for a certain time and for a determinate price. (Art. 1487, Civil Code, 1881.) These conditions were present in the Hamilton contract. The Government granted to Hamilton the right of exploration, exploitation, and navigation for a given term and for a compensation to be determined in the manner specified. The contract, then, had the character of a lease.

Article 1489 of the Civil Code of 1881 allowed leases of uncultivated lands for more than fifteen years, but not for more than fifty

years. The Government granted the streams and rivers and the forests on the wild lands of the State. But the company had not exploited the forests or canalized the rivers. The Government had performed its obligations; the lessee had limited its performance to only a part of its obligations.

It was contended that the additional articles which required the canalization of rivers were not legal, because not properly approved by Congress. These articles did not vary or conflict with the original contract; they were only supplementary thereto. The original contract was approved by Congress in 1884. The minister of fomento reported the supplementary articles to Congress in 1885. In this report the attention of Congress was specially called thereto, and that body approved the execution of the same, along with the entire report. The articles were therefore legally celebrated as a contract. The company so recognized them, and assumed their performance. They were only accessory to a contract previously adopted by formal Congressional enactment; their adoption did not require the same formality of Congressional procedure.

The ninth article of the contract required the company to begin the execution thereof within six months after the date of its approval by the federal council. On several occasions this term was extended, but up to the present time the company has not performed the obligation assumed in the first article or in the second additional articles. No judicial determination of the time wherein the performance of the contract was to be commenced was required, as in contracts wherein no time is named, because in this contract the parties by the ninth article fixed the time. The terms "exploration" and "exploitation" were both embraced within the obligation "to begin the execution of the contract."

The statute of limitation can not be invoked. The term of the contract was twenty-five years. The statute did not apply until that term expired. In any case, twenty years have not elapsed since the last extension expired—April, 1886.

For these reasons the contract was adjudged dissolved and the company was ordered to pay damages as may be determined by just appraisers.

THE BERMUDEZ COMPANY APPEALS.

Appeal to high federal and cassation court.—On May 26, 1905, the company prayed an appeal. On June 2 the appeal was granted. On June 12 the record was filed in the appellate court. On August 3 the case was set down for argument. The attorney-general filed his argument made in the court below. The attorney for the defendant filed another written argument.

Nothing particularly new was developed in the argument of defendant's counsel except in reference to what is called the Pinelli contract, to which I will hereafter refer.

Decision of the court.—On August 7, 1905, the court handed down an opinion wherein it affirmed the decision of the court below. Nothing new was disclosed by this opinion. It followed the line of argument adopted by the judge of first instance, and a recapitulation of the points discussed or of the reasons given for the decision is *unnecessary*.

REVOLUTIONARY SUIT.

On September 22, 1904, the Government began a civil suit in the courts against the company to recover damages, because, it was alleged, the company, through its officers and agents, had supplied funds for and given aid to the revolution of 1901, led by General Matos, and thereby inflicted great financial loss upon the Government.

This action is apparently based upon article 1122 of the Civil Code of Venezuela, which reads as follows:

> Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

And the attorney-general, also, in his argument before the court, cited article 1123 of the Civil Code in support of the action, which reads as follows:

> Everyone is responsible for the injury he has caused not only by his act, but also by his negligence or carelessness.

The company filed exceptions to the complaint, which were in the nature of a demurrer, and the same were argued at great length, but were finally overruled, on December 9, 1904, by the judge of first instance. An appeal was taken by the company to the superior court for the first district, and on March 14, 1905, the decision of the lower court was affirmed.

The company thereupon filed an answer wherein it denied the facts alleged in the complaint, and further asserted that even if the facts were true the company was not responsible for the action of its officers and agents.

When I was in Venezuela considerable testimony had been taken in that country, also in Trinidad and other places. So much of the evidence as I examined was very contradictory and unsatisfactory so far as proving the allegations of fact made in the complaint. But after my return the testimony of some important witnesses was taken in New York under letters rogatory issued from the court in Venezuela. Among other witnesses who testified were Gen. Francis V. Greene and Gen. Avery D. Andrews. The former was the president of the National Asphalt Company during the year 1901 and the latter was the second vice-president.

General Andrews practically admitted that in the summer of 1901 General Matos arrived in New York and called upon the officers of the National Asphalt Company, and after disclosing his plans and stating that all the discordant elements of Venezuela opposed to the existing Government were united under his control, he solicited a contribution from the company in aid of his revolutionary plans. The officers of the company, feeling that the Bermudez Company had been the victim of a conspiracy on the part of the Government of Venezuela and had been subjected to grievous litigation and great expense in the defense of its rights, and feeling a profound distrust of the existing Government, after some consideration gave General Matos $100,000, and subsequently made him two additional payments of $15,000, the total aggregating $130,000. The first payment was made in November, 1901, and the last two in December of the same year.

General Greene testified that he was in Europe when the arrangement to pay this money was made and knew nothing of it until his

return. When he first learned of it, he expressed his dissent from the policy adopted in this particular instance. At the same time his testimony was corroborative of the fact that financial assistance to the Matos revolution had been given.

Soon after these payments were made General Matos appeared off the coast of Venezuela in an armed steamer, popularly known as the *Ban Righ*. The revolt then became active in different parts of the country, and particularly in the section where the properties of the Bermudez Company are located. It was a revolution which came very near succeeding. A destructive war continued for some time thereafter until the battle of La Victoria was fought, in the latter part of October or the first part of November, 1902, wherein General Castro, at the head of the Government forces, was successful, the revolutionary forces were withdrawn, and General Matos fled the country. A desultory warfare was continued in different parts of the country until about June, 1903, when it is stated General Matos issued a manifesto declaring the war at an end.

It is charged that General Matos used the money contributed by the company for the purchase of the aforesaid steamer, although General Andrews insisted in his testimony that he had no knowledge of the purpose to which General Matos intended to apply the money.

One of the defenses made by the company was that it was not liable in an action for damages, even if it had aided the revolution, because of a provision in the Venezuelan criminal code, which is to the effect that all proceedings in respect of revolutionary offenses shall cease on the restoration of public order (art. 123.) Counsel for the company contended that said article constituted a complete amnesty, and that the company was entitled to the advantage thereof, the same as any other resident of the country who had participated in the revolution. The court held, however, that the effect of the amnesty provision in the criminal code was to release offenders from prosecution in criminal action and from the penalty of fine and imprisonment consequent thereon, but that it did not release offenders from damages in a civil action for the same offense.

So far as I have been able to ascertain, this action is without precedent, and the right to maintain the same is at least a debatable question; but as it is still pending and undetermined, I have not thought it necessary or desirable to anticipate the action of the court or to comment on the rights of the parties. There is no doubt in my mind but that the present troubles of the company have been, in part at least, inspired by the resentment of the present administration against the company for its participation in this revolution. The charge has been made that certain American interests competitive with the National Asphalt Company have also cooperated with the Government in obtaining the evidence to support the charge of the company's participation in the revolution and thereby to increase the hostility of the Executive of the Venezuelan Government toward the company. There is much evidence to support this charge. At the same time I think the Government had some evidence of the aforesaid acts of the officers of the company which it had obtained from other sources, and it had already meditated an assault upon the company before these outside interests became active.

The foreign investor in Venezuela is always the subject of embarrassment and surrounded with difficulties because of the frequent

revolutions. The insurgent armies overrun their properties, despoil them of food and supplies, levy assessments upon them for financial aid, and threaten the destruction of their properties if their demands are not granted. At the same time the representatives of foreign interests who have been the longest in the country and who are best acquainted with the situation have, by studiously avoiding taking any part in the politics of the country, succeeded best in maintaining and protecting their properties.

COMMENTS—COMPLAINT OF THE BERMUDEZ COMPANY.

The Bermudez Company complains it is the victim of a conspiracy, which had for its purpose the despoliation of its property. This conspiracy is said to have extended through many years of strife and struggle. Different combinations of conspirators have, from time to time, engaged therein. Its ramifications are said to have pervaded not only Venezuela, but extended to the United States, and included many of its prominent citizens. Through successive administrations it is said the Government of Venezuela had knowledge of this conspiracy, and gave thereto its secret approval, and at times actively participated therein.

In the prosecution of this conspiracy, it is said solemn contracts have been broken; legal rights have been ignored; courts have been overawed or corrupted; forms of law have been perverted to as to work notorious injustice; judges have been summarily dismissed from office because they would not render unjust decrees; lawyers have been arrested and arbitrarily imprisoned because they dared defend the company in the courts; blackmail has been attempted, and finally, under the pretense of enforcing a judicial mandate rendered by a subservient court, the mandate itself evidencing flagrant injustice, the Government of Venezuela, with its army and navy, seized the company's property and thus consummated the long-delayed object of the conspiracy.

The complaint made is a serious one, especially so as it is sought to be made the basis for international intervention by diplomatic negotiation or otherwise. To determine the merits of this complaint required thorough investigation, careful consideration, and impartial judgment. I have therefore gone over the entire record, and have read and studied every document, decree, pleading, or judgment which evidences the history of the company's relations with the Government of Venezuela for more than twenty years. I have endeavored in this report to note every step taken or proceeding had, from the Hamilton contract down to the last judgment in the suit, wherein the contract aforesaid was declared canceled. In doing so I have, perhaps, subjected myself to the criticism of indulging in unnecessary detail or tedious prolixity, but it seemed to me the importance of the subject demanded something more than a mere summary of the facts or a general statement of conclusions.

GENERAL OBSERVATIONS ON VENEZUELA.

Before entering upon a discussion of the facts hereinbefore recited, I deem it proper to make a few general observations on the political, social, and commercial conditions that exist in Venezuela, in order

that the attitude of the Government toward the Bermudez Company may be fairly understood.

Area and population of Venezuela.—The area of Venezuela is equal to the combined area of seven prominent countries of Europe, to wit, Germany, France, Italy, Netherlands, Belgium, Switzerland, and Ireland. The area of the former is stated to be 1,552,741 square kilometers, the combined area of the other countries above named being 1,552,740 square kilometers.[a] The population of Venezuela (1904) is 2,633,671. The combined population of the other countries is 147,639,631, or 1.69 inhabitants to the square kilometer for Venezuela and for the other countries a combined average population of 95.14 inhabitants to the square kilometer.

There has been for years little or no emigration to Venezuela; therefore the increase in population from year to year is comparatively small. In the last twenty-five years this increase has been only about 2½ per cent.[a]

Natural resources.—Nature, with a lavish hand, has poured her richest treasures upon Venezuela. The wealth of the natural resources of the country is almost unlimited. Its agricultural resources are varied—coffee, cocoa, sugar cane, corn, tobacco, cotton, beans, etc., grow with great luxuriance. Its mountains abound with rich minerals. Its broad pampas and plains afford subsistence the year round for great herds of cattle. In its forests are found rare and precious woods. Its territory is traversed by mighty rivers. But its population is largely centered in and around the towns and cities and along the seacoast. The interior of the country is almost wholly unsettled and undeveloped—much of it has never been explored. Mountain and plain, forest and river, are, for the most part, wrapped in their "primeval sleep."

The larger part of the population is of mixed blood—Spanish, Indian, and negro, in varied combinations and degrees. These people are uneducated, ignorant, and very poor; but the climate of the country is kind—a perpetual summer. Their wants are few, and their lives are simple. They may be excitable and emotional, but it is an acknowledged fact that, if let alone, a kinder, gentler, and more peaceable people never lived.

There is a limited class of white people who are intelligent, educated, and refined. They still retain that supersensitiveness which characterizes the race from which they sprang, and in dealing with them this characteristic has to be taken into account. Many of them were educated in Europe. They have traveled a great deal and know much of the world, but, as a rule, they are more familiar with Europe than with the United States.

Unfortunately for them and for their country the opportunities for employment for educated and ambitious men are limited. Agriculture is the leading business of the country, but it is in a very primitive and backward state. Sugar is one of the principal products, but there is not a modern sugar mill in the country. There are no manufacturing establishments to speak of, no extended lines of commerce, and heavy export and import duties are a serious burden upon what little commerce there is. The field for the learned professions is limited and uninviting. There is but little for the educated man to do but to engage in politics. The rewards to the officeholder are

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[a] *Venezuela. Compiled by* the International Bureau of American Republics, 1904.

supposed to be great; hence the constant struggle between contending factions for control of the Government. These factions are not divided on any well-defined questions of political principle or party policy; the struggle is for power and for the financial rewards which, directly or indirectly, power brings.

The people have been impoverished by the repeated revolutions which have swept over the country. In a revolution the loss of human life is not so very great, but the loss of property is tremendous. Predatory bands of undisciplined soldiers, more intent on plunder than on fighting, roam over the country. Plantations are ruined, crops are destroyed, live stock is driven away, and tribute is levied by both sides upon the people. The result is the people have no capital, and, what is worse, they have no initiative. They realize that their country should be developed, that foreign capital is needed for that purpose, and that immigration should be encouraged. But apparrently they do not know how to secure these advantages. They have no settled government, no fixed economic policies, no established order of things; they live always in the fear and under the shadow of the revolution. Capital is afraid to invest, and the immigrant is not attracted.

Adventurers have gone there, and with the promise of great industrial enterprises for the development of the country, have secured valuable concessions. Some of these concessions were principalities in extent of territory and in wealth of resources. These concessionaires contracted to clear forests, to channel rivers, to open mines, to establish colonies, etc.; but little was done in fulfillment of these contracts. Corporations were organized in Europe or in the United States to exploit these concessions. In some instances more or less capital was raised for that purpose, but little of it was ever spent in Venezuela.

In the meantime revolution after revolution occurred. Out of the flame and smoke of battle came supreme civil chiefs, one after another. They ruled with the sword; they were bound by no constitutions and were governed by no laws. With each of them came a new class of favorites, and a new crop of adventurers appeared. More concessions were granted; old ones were ignored; oftentimes conflicting concessions were granted for the same enterprise. The country is plastered over with concessions of one kind and another, some of which have existed for years. The result has been the development of the country has been retarded; vexatious litigation and international complications of one kind and another have arisen, and the faith of investors and the credit of the Government have been destroyed. It was in this political atmosphere and amid these unsettled and uncertain business conditions that the New York and Bermudez Company made its investment and undertook to develop a business enterprise.

THE "FELICIDAD" AND "VENEZUELA" CLAIMS.

The alleged conspiracy.—The evidence of the beginning of the alleged "glaring and unscrupulous conspiracy" against the company is found in the grant by the Government of a definitive title to the asphalt mine called "Felicidad." The title was granted on November 30, 1897.

The detailed history of this title has already been recited. The original claimants sold their alleged title to Warner & Quinlan, and the latter sought to establish it against the opposition of the Bermudez Company. There is no doubt but the claims called "Felicidad," "Venezuela," "South Side," etc., were all located on the asphalt lake to which the Bermudez Company claimed prior title under its mining deed of December 7, 1888. It was undoubtedly an attempt on the part of these claimants to take advantage of what was a manifest and, as was supposed, incurable error in the company's title; if they could succeed no ethical considerations restrained them.

DEFECTS IN THE COMPANY'S MINING TITLE.

The deed of December 7, 1888, and the preliminary proceedings leading up thereto located the mine "at a distance of 20 kilometers to the southeast of the said village of Guariquen, and 108 meters above the level of the sea." No one disputes the fact that the lake in question is only 10 kilometers from the village aforesaid, and its elevation above the sea is only 4 or 5 meters. If the location of the property conveyed is to be determined by this deed, or by the record preliminary thereto, such location will be found away beyond and south of the lake and far up in the air.

It is also to be observed that under the law as it then existed the title to a mine was one thing and the title to lands adjoining was another. The right to a mine was to be largely, if not altogether, determined by the mining title alone. Article 7 of the then existing mining law provided that the title to a mine, even when granted to the owner of the land on which it was located, conveyed the mine as a property distinct from the land. Article 10 also provided that the title to a mine gave the grantee a right to only the exploitable substance. Article 13 of the same law directed that mining properties should be clearly marked out by footpaths, and the angles of the boundary lines should be marked with posts.

But in the record of this title no survey was made of the lake, no boundary lines were specified, no corners were established, no area was given, no footpaths were made, and no posts were located. The only description or location given was the general statement that the mine was located in a given parish, district, section, and State, and at a given distance from and to the southeast of Guariquen; and in stating this distance a material error was made.

If this lake had been located in the United States, if the claimants to "Felicidad" had acquired possession of the part so designated, and if the company had to establish its title under its mining deed alone and to recover possession in a common-law action of ejectment, there is no doubt but it would have failed in its suit for want of sufficient description in its deed and in the preliminary record of its title.

THE COMPANY'S LAND TITLE.

It is true that concurrently with the proceeding to establish a title to the mine the company also took steps to acquire title to a large tract of wild land, which was intended to include the lake within its boundaries. The only basis for a defense of the company's title to the *mine seems to be* found in the record of this land title, if it can be used

to support the former title. Apparently these titles were considered together in the trial of the Warner & Quinlan suit. That both of them relate to each other must be admitted, and from every equitable point of view they ought to be considered together.

A survey and map of the lands, as a part of the land title, were made by one Orsi de Mombello, who certified to the map as an "engineer of the Republic;" but throughout all the proceedings to establish the land title, including the map, the same error was made as in the mining title in the statement of the distance from Guariquen. The map purports to be a plan of the mining concessions as well as of the lands, but it does not give the boundaries of the lake or definitely locate the same, except that some irregular lines are shown within the boundaries of the land survey which, it may be assumed, were intended to indicate the lake.

The materiality of the aforesaid error as to location, made not only in the map, but in every part of the record on which the wild-land title is based, is apparent when consideration is given to article 7 of the wild-land law under which this land title was established. This article provides that neither the State nor the nation shall be obliged to put the purchaser of lands in possession by any determined boundaries or to be subject to any responsibility for warranty or eviction. And these conditions are declared to be irrevocably fixed as a part of every land-title deed. The responsibility, therefore, for definitely locating lands purchased, or of establishing the boundaries, or of obtaining possession thereof rested solely upon the purchaser.

It has been said the deed to "Felicidad" was equally vague and indefinite in description. But the promoters of that claim exercised more care than did the Bermudez Company. They evidently went onto the lake, marked off the corners of the boundaries with posts; then they had a survey made which ran all the lines; and the property was stated to be only 10 kilometers from Guariquen. This survey was the link in the chain of their title which determined the location of their claim. Objection may be made to the sufficiency of their map, but it came nearer to a definite location of the property than did that of the Bermudez Company.

The company in its aforesaid "Statement of the wrongs done the company" explains the difference in the distance from Guariquen, as stated in its title and as stated in the title to "Felicidad," as follows:

> The apparent difference in measurement was due solely to the fact that in the company's title of 1888 the distance was measured over a winding Indian trail, which was the only traversable way then in existence, while the promoters of "La Felicidad" measured their 10 kilometers along a direct road which had since been built by the company they were seeking to despoil.

In a former brief, dated February 19, 1901, also filed in the Department of State, page 31, the statement is made:

> He (Mombello) did not measure the distance from Guariquen, but, after the fashio of the ordinary Venezuelan surveyor, estimated the distance by the time it took him to travel it. The Venezuelan measures distances by what he can accomplish with a good mule, and as a mule will usually maintain through the day an average of 3 miles, or 5 kilometers, an hour, and as it took four hours to traverse the way from Guariquen, Mombello roughly estimated the distance as 20 kilometers.

One or the other of the foregoing statements may be true, but each of them is dehors the record. In the case of Warner et al. *v.* Bermudez Company, the latter undertook to prove the first statement by Mombello. But, as hereinbefore shown, his evidence was vague and unsat-

isfactory. He would not say how he came to make the error, although he supposed he arrived at the given distance by measuring a winding mule path. By whatever means he arrived at the distance in question he made an error, and this error runs through the entire record of both the land and mining titles.

If, however, the two titles are to be construed together—that is, if the land title and the survey which is a part of it can be used to support the mining title—then in the land title certain facts appear which were pointed out by German Jiminez, the surveyor, in his report, which may be used to cure the error as to the stated distance from Guariquen. In the company's petition for the land title, of October 8, 1888, it stated that it was taking the necessary steps to secure a title to a mine located "on a road constructed by the company toward the southeast for a distance of 20 kilometers from Guariquen up to a house belonging to the company, and situate on this road, over a little hill before getting to a wooden bridge which leads to the surface of the asphalt deposit;" and the petition further stated the company desired to acquire title to lands which included the mine aforesaid.

Jiminez in his report called attention to the fact that on the north side of the lake there was a lagoon, extending east and west; that on the north side of this lagoon there was a small eminence or hill, sloping to the south; that the commission of engineers there found the ruins of a wooden bridge extending across this lagoon; that there were evidences of a roadway running to the bridge, and there was also a house, or "rancho," standing on this roadway. These, he declared, were fixed monuments, which corresponded to the facts stated in the aforesaid petition for a provisional deed to the lands, and the plan of Mombello's survey showed the north boundary line of the land survey ran east and west through a house located as aforesaid; and, Jiminez contended, when monuments were thus established they must govern, although neither courses nor distances corresponded therewith, and therefore the distance named from Guariquen, though erroneous, was immaterial. And this was the line of defense followed by the company in the Warner & Quinlan suit.

Contests over mining claims have frequently arisen, and attempts to take advantage of mistakes in titles and surveys have frequently been made in our own country. The records of our courts, both State and Federal, are replete with instances of that kind. And particularly has this been true in the mining regions, where the most bitter legal battles have been fought. The echoes of such battles in Montana, for instance, have been heard all over the country. In these contests the honor of many prominent men has been impugned, the integrity of courts has been assailed, and charges and countercharges of fraud, bribery, and collusion have been made with reckless profusion. The fact that a contest of a similar character arose in Venezuela does not necessarily prove that a conspiracy existed or that the Government was a party thereto.

As before stated, the protests and petitions filed with the minister of fomento by both sides laid greater emphasis upon the land and mining titles than upon the Hamilton contract. The contest before the minister was largely a question of location and boundaries. To *settle that* question the minister ordered surveys to be made, and

finally he decided, by the decree of December 10, 1900, in favor of the claimants to both "Felicidad" and "Venezuela."

While, on broad equitable principles, I think this decision was wrong, yet in a country where the civil law prevails, and where the rights of parties are largely determined by strict legal construction, I can not say in this case there was no room for debate or for differences of opinion.

INDUSTRIAL INACTIVITY OF BERMUDEZ COMPANY.

In addition it is fair to consider the economic phase of the question with which the minister was confronted and by which he may have been influenced in making his decision. This lake is said to be the largest asphalt deposit in the world. The asphalt is said to be remarkable for its purity and for the large percentage of bitumen which it contains. The Bermudez Company acquired a right to exploit it on November 26, 1885, under the Hamilton contract. At the time this decision of the minister was rendered the company had been in possession of the lake for fifteen years. In the company's own "Statement of the wrongs done," etc., on pages 9 and 23, it says: "The first appreciable shipments of asphalt began in 1891 with 250 tons; 1892, 1,130 tons; 1893, 1,743 tons; 1894, 7,038 tons; 1895, 3,025 tons; 1896, 5,654 tons; 1897, 11,790 tons; 1899, 11,825 tons, and 1900, 17,981 tons." The figures for 1898 are not given, but assuming the shipments for that year were the same as in 1899, this would give 11,825 tons more, or a total of 72,621 tons for the fifteen years. The duty paid the Government, as fixed by the Hamilton contract, is about 40 cents per ton, making a total revenue to the Government for the period named of $28,904, or less than $2,000 per annum.

Taking into consideration the size of the deposit, the quality of the product, and the probable market demand therefor, the foregoing exportations show that up to the time this decision was rendered the company had not been a potent factor in the development of the industrial life of the country, and there was little in its record, from an economic point of view, to commend it to the special favor or protection of the Government.

Therefore, when the representation was made to the minister, as it was made, that the company had retarded the development of the industry in its own interest and to the detriment of the industrial interest of the country, and that the lake was large enough to engage the activities of the three companies—Bermudez, Felicidad, and Venezuela—it may be assumed the minister felt justified in giving Warner & Quinlan and the Venezuela people the benefit of any technical objection that could be made to the Bermudez Company's titles.

THE WARNER & QUINLAN SUIT.

The next step taken was the suit of Warner & Quinlan against the Bermudez Company, wherein the plaintiffs sought to establish the supremacy of their title. I examined the record of this suit with the hope of finding the merits of the company's land and mining titles fully considered and finally adjudicated. But I was disappointed.

The evidence introduced and the arguments of counsel were addressed almost entirely to this question. It was squarely before the court, but the latter evaded the question, as all courts sometimes do, and fell back upon the Hamilton contract, as the "judicial fact" of "classic and primordial" importance, which controlled the decision.

The lawsuit was a hard-fought battle. Eminent counsel were engaged on both sides. Every step in the case, every question of law or practice, whether material or not, was contested most bitterly. No doubt it was an expensive lawsuit; the whole controversy before the minister of fomento and before the court must have been expensive to both sides; but I was surprised to learn how expensive it really was to the Bermudez Company, as appears from the following report.

REPORT OF COMMITTEE OF CERTIFICATE HOLDERS.

On July 18, 1902, a committee consisting of Henry W. Biddle, Rudolph Ellis, Alvin W. Krech, E. B. Morris, and C. S. W. Packard, representing the "Holders of the collateral gold certificates of the Asphalt Company of America," made and published a report giving a history of the company and a statement of the properties it owned, and on page 9 of this report appears the following:

> This company also holds, in addition to other properties, nearly all the capital stock of the New York and Bermudez Company, the owner of the great Bermudez pitch lake in Venezuela, which is more than 1,000 acres in extent and is stated to be the largest asphalt deposit in the world, the asphalt containing a larger percentage of bitumen than Trinidad Lake asphalt. This Venezuela deposit is of great value, but its title is now in dispute and the subject of litigation at the instance of certain rival interests.
>
> It is believed by those who have followed the course of the litigation that the company's title to the deposit is clear and can be successfully maintained. *The maintenance of these rights, however, has been most costly, involving an expense in the two years—1900 and 1901—of $417,897.18.* The amount at stake would seem to justify this expense, though the question is still undetermined.

THE ARREST OF DR. BRUZUAL SERRA.

One of the facts cited by the Bermudez Company upon which it bases the charge that the Government actively assisted Warner & Quinlan in their effort to despoil the company of its property is that during the pendency of the Warner & Quinlan suit and just on the eve of a hearing therein the Government arrested and imprisoned Dr. Bruzual Serra, the company's senior counsel, and later arrested Doctor Urbaneja, its other counsel.

The arrest of Doctor Bruzual at a critical time in the progress of the lawsuit was an act well calculated to embarrass the company and to suggest to the mind of its officers an unwarranted interference on the part of the Government. But before passing judgment on this incident some consideration ought to be given to the probable cause for this arrest, which may be found in the record.

I have heretofore narrated with considerable detail the history of two appeals taken in the Warner & Quinlin suit from the judge of first instance to the full court, which involved certain questions of practice. The two appeals were intimately related to each other, and one of them, in a large degree, depended on the other. These appeals were based on preliminary questions of practice; they did *not involve the* merits of the controversy. The immediate question

before the court was in what order these appeals were to be heard and when Warner & Quinlan should be required to give security for costs. The time when and the order in which the decision of these questions should be made was a matter largely, if not altogether, within the discretion of the court. The court reserved its decision by saying it would decide the questions in due time. In so doing it can not be said the court abused its discretion.

But thereupon Doctor Bruzual challenged the members of the entire court. He charged them with using "Hebraic" methods of interpretation of the law, whatever that may mean. He openly charged them with "illegal favoritism," with "the most flagrant deprivation of justice," and with the practice of "notorious injustice."

These were very grave charges to make against the high federal court—the highest tribunal in the land; and to make them without just provocation was certainly a serious offense. If any lawyer had so conducted himself, with no greater provocation, before any of the courts of our country, he would have received prompt and severe punishment. But in this case the court passed the insult by in dignified silence. Not so with the Government. This attack on the court was made on the 7th of August. On the 24th of the same month Bruzual was arrested and imprisoned. The connection between the two incidents is apparent, especially so when we take into consideration the political atmosphere which surrounded both court and counsel.

POLITICAL CONDITIONS IN VENEZUELA.

The sword of revolution always hangs suspended by a single hair over the head of every ruler in Venezuela. He never knows what moment it may fall. He is continually on the watch. He gives heed to every rumor and notes every sign of opposition. A revolution, if successful, may mean for him death, exile, imprisonment, or confiscation of property.

In that country there is no political opposition in the sense in which we understand it. There is no public discussion on the platform or through the press of political principles or administrative policies. It is true the constitution guarantees freedom of speech and of the press, but the constitution is an abstraction—an idealism; it has no application in the struggle for political supremacy. To oppose the dominant political element is to secretly plot and intrigue against it. There is no open appeal to the suffrage, the judgment, and the conscience of the people. The only known way in which to give effect to such opposition is to incite a revolution. The fire may be suppressed for a time, but it is always smoldering; it may blaze up any moment or at any place.

The Government in all departments—national or state, executive, legislative, or judicial—is in political accord. He who attacks the Government or any of its departments is a disturber of the public peace, a promoter of a revolution; and he who raises "the phantom of international dispute" is a public enemy. He is likely to be arrested at once and indefinitely imprisoned. There is no indictment, no trial, and no writ of habeas corpus. Once a man becomes a political "suspect," any act of political indiscretion, any suggestion of a purpose on his part to involve the Government in international difficulties, exposes him to arrest; and no sense of propriety and no

consideration for the rights of others—natives or foreigners—will restrain the hand of the Government. It has always been so in Venezuela, and always will be so, until the people have a better conception of what a free government really is and until they have higher standards of public life and duty.

Doctor Bruzual made an unwarranted attack on the court. He made his charge a part of the record, with the evident purpose of making it the basis for an international dispute. The Government resented this action on his part and punished him with great severity. He was kept in prison until sometime in the following year, when he was released, but his health is said to have been impaired, and soon afterwards he died. Doctor Urbaneja, his associate, was also arrested and imprisoned for a time; but he was a party to the same assault upon the integrity of the court. He is now quietly living in Caracas. In a conversation I had with him he assured me he was not, in his opinion, arrested because of his connection with the company, but because of his suspected relations with hostile political intrigues.

I do not assume to justify or to apologize for the arrest of these attorneys. I only wish to disclose the circumstances attendant thereon, and the probable cause therefor as shown by the record.

THE HAMILTON CONTRACT—ITS CONSTITUTIONALITY.

On January 28, 1904, the high federal court finally decided the Warner & Quinlan suit, and apparently decided it in favor of the company; certainly against Warner & Quinlan. As before stated, the decision was entirely based on the Hamilton contract, which was adjudged to be still in existence and which vested in the company the exclusive and the paramount right to exploit asphalt mines within the territory named, during the time therein prescribed.

The soundness of this decision on principle may well be questioned, because it is a very serious question whether or not the Hamilton contract was constitutional or in any sense a legal and binding obligation upon the parties thereto, or whether this contract alone could be asserted as a legal bar to the preemption of mining claims by other parties. A very strong and convincing argument can be made, and has been made, against the constitutionality of this contract, for the reason that under the constitution of 1881 and under the previous constitution of 1874 the mines and the wild lands were declared to be the property of the respective States in which they were located. In the constitution of 1881 the right to administer the mines was granted to the Government, in order that they might "be governed by a uniform system of exploitation."

On March 13, 1883, President Blanco, in the exercise of the authority thus conferred by the constitution, promulgated an executive decree wherein were prescribed the rules and regulations which were to be considered the uniform system for the exploitation of mines. This decree had the force and effect of a public law, and was in force, so far as I can discover, on September 15, 1883, when the Hamilton contract was made.

By the first article of the decree it was declared that all mines were the property of the State in which they were situated, and that they *should* be governed by a uniform system of exploitation, as regulated *by that decree.*

By the fourth article of the same decree it was provided that no mine could be exploited, except where a concession from the federal executive had been previously granted, and then only after all the formalities prescribed by the decree had been previously complied with. And the decree prescribed a regular procedure to be followed in acquiring a title to a mine.

It must be admitted that the Hamilton contract, when the extent of its application, the variety of subjects it embraced, and the manner of its execution are considered, did not conform to the mining law then in force, and was no part of a "uniform system of exploitation" as authorized by the constitution and as prescribed by the decree of 1883. Indeed the decision of the high federal court in the Warner & Quinlan case expressly declared that the Hamilton contract "created for twenty-five years a special situation for the exploitation of the asphalt and other natural products existing in the old State of Bermudez." The fact that a "special situation" was thus created excluded the contract from a "uniform system," and made it objectionable from a constitutional point of view.

More might be said on this point, but it is unnecessary. The Government never questioned the contract on constitutional ground; the Bermudez Company never disavowed it, and the high federal court adjudged it a legal and subsisting contract, having the force and effect of a public law, so that the discussion of its constitutionality is now more academic than practical.

VENEZUELA *v.* THE NEW YORK AND BERMUDEZ COMPANY.

Six months after the high federal court decided the Warner & Quinlan suit, and on July 22, 1904, the Government of Venezuela, through its attorney-general, commenced a suit in the high federal and cassation court against the Bermudez Company, and therein asked the court to decree the cancellation of the Hamilton contract, on the ground the company had defaulted in the performance of the obligations by it assumed.

The complaint alleged that the obligations assumed by the company in the contract, and in the additional articles thereto, were: (1) The exploration of the forests, the exploitation of the wood, and other natural products found therein. (2) The exploitation of asphalt. (3) The payment of certain fixed duties on the wood and other natural products. (4) The canalization of one or more rivers, beginning with the Cano Colorado and the Guarapiche.

And the complaint further alleged the company had made default in the performance of all its obligations, except as to the exploitation of asphalt; it had failed to exploit the wood and other natural products of the forests; it had canalized no rivers, and its exploitation of asphalt had been ludicrously small.

THE COMPANY'S ANSWER.

The company's answer was argumentative, evasive, and discursive. It said the supposed obligations in the contract, except that of exploitation, were only optional privileges, the exercise of which, or of any of them, was entirely discretionary with the company. The company had fully performed all the obligations of the contract, as evi-

denced by a declaration to that effect by the minister of fomento, expressed in the decree of July 23, 1900. That no time was specified in the contract wherein the obligations were to be commenced or completed; and no default as to such of them as were not performed, if any there were, could be asserted until it had been judicially determined what the time for performance was, and until that time had expired. That the obligation to canalize rivers never legally existed if it did exist, it was alternative with an obligation to build a railroad and the company had built a railroad. And that the asphalt lake lands, and appurtenances did not belong to the company by virtue of the contract, but by virtue of the titles granted December 7 and 14, 1888, which titles were not susceptible of question in this suit.

There were two issues of law and fact made up in this case, which were separately tried and decided; one was the "sequestration" issue and the other was what was called the "main" issue. The first involved the proceedings wherein the company's property was seized or sequestrated, the other the cancellation of the Hamilton contract. The "sequestration" issue was first tried and decided, but in this review of the record consideration will be first given to the "main" issue.

THE MAIN ISSUE.

This latter issue involved the question whether or not the Government was entitled, under the law and the evidence, to a decree or judgment canceling the Hamilton contract. And this leads to the consideration of what the obligations of the company under the Hamilton contract were, and whether or not it was in default in the performance of the same.

The rights or privileges granted the company by the original contract, excluding for the time being the second additional articles, were: (1) To explore the forests on the wild lands of Bermudez, and to exploit or take therefrom timber for various purposes, including plants, seeds, etc. (2) To exploit, mine, or export the asphalt in the State aforesaid. (3) To import free of duty machinery, etc., required for the aforesaid exploitation. (4) To navigate the streams and rivers of the State with small steamboats. (5) To exercise these rights for a period of twenty-five years from September 15, 1883.

The obligations of the company, as specified by the contract, were: (1) To pay into the public treasury certain specified duties or taxes upon asphalt and upon timber and other natural productions of the forests. (2) To "*begin the execution of this contract within the term of six months*" * * * from the date the same was approved by the federal council, the Government having the right to extend that period from time to time, at its discretion. (3) Failure to comply "*with any of the foregoing stipulations*" annulled the contract at once. (4) Doubts or controversies concerning the contract were to be decided by the courts of Venezuela.

In the complaint filed by the attorney-general the alleged default on the part of the company in the performance of the foregoing stipulations was that it had failed to exploit the timber or other natural products of the forests, and also that it had failed to canalize any of the rivers of the State, as provided in the second additional article; but I will postpone consideration of this last alleged breach, and for the present will limit the discussion to the rights and obligations of the parties under the contract as originally made, because, in

my judgment, the question of the canalization of the rivers stands by itself, as will be hereafter more fully discussed.

The attorney-general contended before the court that the rights or privileges granted and the obligations assumed were reciprocal; and that the obligation to begin the execution of the contract within a specified period applied just as much to the exploration of the forests and the exploitation of its products as it did to the exploitation of asphalt. The failure to explore or exploit the products of the forests, or to exploit the asphalt, in either case, would be a failure to comply with one of the stipulations of the contract; and such default, under the ninth article, worked a forfeiture of the entire contract.

The Bermudez Company, on the other hand, contended before the court that the rights and privileges granted by the contract were optional in character; that the company was free to exercise any one or all of them, as it saw fit to do; and that the obligation expressed in the ninth article to begin the execution of the contract within six months only applied to exploration.

The company's attorney, Doctor Bance, expressed his construction of the contract, in his argument before the judge of first instance, as follows:

> The Government says: I give you the right to go and explore and study the wild lands of the State of Bermudez and its forests. If you find there any natural products that can be used for industries, you shall have the right to develop them during twenty five years, paying me a contribution or impost, etc. * * *
>
> Hamilton says: "I accept the right to go and explore and study the wild lands and forests of the State of Bermudez. If I find there any natural products utilizable for industrial purposes and the development is commercially advantageous *and it suits me, I shall develop them according to my discretion*, complying with the contract and with the laws. If among the things developed there should be found the products which the Government taxes by the contract, I shall pay the taxes. If I should fail to make the exploration and study within six months, there is no contract, and I shall lose the advantages which I am offered thereby."

The Bermudez Company has filed in the Department of State a number of briefs, statements, etc., in which it has set forth its claims with great detail. In none of them does the company assert in positive terms that the privileges granted by the contract were optional or that it could exercise any one of them and ignore the others and still fulfill the letter and spirit of the contract. But it may be said that inferentially it does so assert, because it has several times quoted with approval from a letter said to have been written by Mr. A. H. Carner to the company, under date of April 14, 1900, of whom it says, his "competency to speak upon the subject can not be questioned." Mr. Carner said:

> By those who oppose the company and uphold those adventurers, from whom they hope to receive a reward, it is said that the company is not performing the stipulations, that it has canalized no rivers, cleared no forests, etc. By reference to the concession it will be seen that nearly, if not all, of the stipulations are optional with the concessionaire. * * * Thus it is that in formulating the concession the Government made most of the stipulations optional with the concessionaire. * * * By reference to the copy of the concession which was passed upon and approved by the national Congress, it will be seen that there is no stipulation by which any one of the obligations should be performed in preference to another, and thus it is left open to the concessionaire to pursue the one which meets his greatest convenience, reserving to himself the performance of the other stipulations during any part of the term of the concession.[a]

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[a] Letter of company's counsel to Department, dated August 15, 1904, p. 2. Statement of wrongs done, etc., p. 27.

CONSTRUCTION OF THE HAMILTON CONTRACT.

It is a general rule that a contract is to be construed with reference to the intent of the parties. For that purpose the whole context will be considered. The court will, as far as possible, assume the position of the parties when they entered into the contract, and will take into consideration the object to be attained, and all the surrounding facts and circumstances, and will give effect, if possible, to each provision of the contract.

The parties have inserted each provision in the contract, and accordingly, if possible, the contract should be so construed as to give effect to each provision inserted therein.[a]

What may be considered another aspect of the rule that the instrument shall be considered as a whole, is the requirement that every clause and every word shall be given effect if this is in any way possible, and no part will be rejected unless absolutely repugnant to the general intent.[b]

Applying this rule of construction to the Hamilton contract, it is reasonable to assume that at the time it was entered into the State of Bermudez was largely an unexplored wilderness. Its wild lands were known to contain deposits of asphalt, and its forests were supposed to contain valuable woods, plants, etc. It was doubtless the purpose of the Government in making this contract, aside from the direct revenue to be received, to have the forests explored and to have their valuable products exploited, if any were found; to have the asphalt industry developed, and thereby to open up the State to commerce and settlement. To accomplish these results it granted Hamilton the privileges specified in the contract.

By article 9 of the contract Hamilton agreed to commence the work contemplated within a period of six months after the contract was approved by the federal council. He further agreed, in case he failed to perform any of the stipulations of the contract, the latter should be wholly forfeited. It can not be questioned but that the work he was to begin was the exploration of the forests, the exploitation of their products, if any were found of commercial value, and the exploitation of asphalt.

It was evidently then unknown to the parties whether or not the forests contained, or to what extent they contained, wood or other products of commercial value. Hamilton agreed to explore the forests to find out. His obligation was "to explore and exploit." If, as the result of his exploration, woods, plants, and other products were found in quantity and quality suitable and sufficient for commercial purposes, it was undoubtedly intended that exploitation of the same was to follow.

There was no obligation to explore for asphalt. The parties evidently knew that product existed; and when it was ascertained that the specified forest products also existed, then both the privilege and the obligation to exploit the same also applied thereto as much as they did to the exploitation of asphalt.

To say that the right to exploit the products of the forests could be ignored, in view of the obligation assumed by Hamilton in the ninth article, and that the exploitation of asphalt alone would be a full performance, is to say that the exercise of one right and the discharge of one obligation was equivalent to the performance of the whole contract.

[a] Page on Contracts, vol. 2, sec. 1114.
[b] Am. and Eng. Enc. Law, vol. V, p. [illegible]

It is the most important of all the rules of construction that the whole agreement is to be considered; for obviously it can not be the intention of the parties to an agreement, with stipulations or qualifications, that some of them should be altogether disregarded and a part of the agreement magnified into an equality with the whole; but on the contrary, such a meaning is to be given to particular parts as will, without violence to the words, be considered with all the rest and with the evident object and intention of the contracting parties.[a]

The construction placed on the contract by the company when it first began work is of great weight in determining the mutual intent of the parties. The company evidently understood that the obligation "to begin the execution of this contract" equally applied to all the rights and privileges granted, and that the exercise of either of those rights was in no sense optional or discretionary. This understanding is evidenced by a series of letters or reports written by the company—or by Hamilton and other officers—to the minister of fomento, which were introduced in evidence.

Hamilton assigned the contract to the company on November 16, 1885. The Government approved this assignment on December 9, 1885. On the very next day Hamilton, then managing director of the company, wrote the minister that he would proceed at once to Maturin with the necessary equipment to begin work. Maturin is on the Guarapiche River, and by the second additional articles it was intended to be made the head of navigation by the canalization of that river, and the work to which Hamilton evidently referred was such canalization.

On January 19, 1886, Hamilton wrote the minister that he believed it would be of great benefit to the State of Bermudez if a road were opened up from some of the navigable streams to Maturin, that the company's engineers would make the necessary survey, and that plans therefor would be submitted to the minister; thereby complying with the second additional articles.

On April 2, 1886, the company wrote the minister an extended report in which it said that by the end of the month the company would export large quantities of wood in fulfillment of one of the articles of the contract; that the company had already put in service both steam and sailing vessels to be used in general commerce, and in the transportation of "natural productions;" that the company's engineers were making plans for clearing the channel of the Guarapiche River; that the same engineers were making surveys for a proposed road from the river San Juan to Maturin; that they had surveyed a tramway from Guariquen to the asphalt lake for the purpose of exploiting that product, and that the minister would be informed from time to time of the progress of the work.

On April 8, 1886, William Smith, the secretary of the company, wrote the minister an extended report, in which he said the engineers had made the necessary surveys for the canalization of the Guarapiche River; that they reported difficulties in the way of so doing, on account of a scarcity of water, which report would be soon sent to the minister; that the company had in mind the construction of a road from some point on the river San Juan to Maturin, which point would serve as a port for Maturin and would give it better shipping facilities. He asked that consideration be given this suggestion, and he promised to submit plans, estimates, statistics, and the draft of a new agreement concerning these proposals.

[a] *Chitty on Contracts*, 11th Ed., vol. 1, note p. 117.

On June 11, 1886, the company sent another report to the minister, reporting the work done. It said the cutting of wood was actively under way, and the company was only waiting for sailing vessels in which to ship the same to the United States and Europe; the clearing of the Guarapiche River was also actively going on; work at the asphalt lake was conducted uninterruptedly, the ground was ready for construction of the tramway, and the exploitation of asphalt would be carried on in a stable manner as soon as necessary material was received, etc.

The company, in its own behalf, read in evidence a long report, without date, from Hamilton to the company, in which he reported an extended trip which he had made by steamer up and down the rivers and to the various ports in the State.

On the Guarapiche River he said he found one O'Brien at work for the company, with 75 men cutting timber of various kinds; on the San Juan River was a point where timber had been cut under his direction, such as cabineto, or mottled mahogany, gateado, etc., of superior quality and beautifully marked. On river Caprio he had another contractor at work cutting timber of the kind last above named.

At Guariquen, the construction of a road to the pitch lake was well under way, on which donkeys would be used to transport the pitch.

He described a site on the San Juan River which he examined, and which he suggestd was a suitable place for the location of the company's headquarters; the soil was magnificent and "lumber abundant." He said the company's plans had given great impetus to the development of the country, houses had been built, clearings were made, and the prospects were flattering for a large freight business for the company's steamers in the transportation of cotton, cocoa, coffee, cattle, etc.

Mr. Carner, in the pamphlet to which reference has heretofore been made, and which will be hereafter more fully described, on page 11 says that in 1886 Hamilton had "hundreds of workmen employed in the wooded lands of the rivers Guarapiche, Frances, and San Juan in the cutting of railway ties and wood of various kinds destined for the markets and in the construction of buildings. The industrial movement of this work extended from Maturin and Cano Colorado on the river Guarapiche to Puerto Caripe, Parare, and Buen Pastor, and on the river San Juan, and at Guariquen on the river of the same name."

The foregoing reports clearly demonstrated what was the company's original understanding of the intent and purpose of the contract. In obedience to the ninth article, it commenced performance by cutting and shipping wood, by exploiting asphalt, by locating roads and tramways, and by preparations for navigating the rivers and the high seas with both steam and sailing vessels for the transportation of its own products and for general commerce. It is evident the company then had in mind an extended and ambitious enterprise. It then understood that the obligations of the contract applied to all the rights and privileges granted, and this was, in my judgment, the proper construction of the contract.

COMPLAINT AND EVIDENCE OF THE GOVERNMENT.

The next consideration is the complaint of the Government that the company had not performed the obligations of the contract and the evidence introduced in support thereof.

The complaint alleged, as one of the grounds for canceling the contract, that the company had failed to exploit the natural products of the forests, and for that reason the Government not only asked the court to adjudge the contract forfeited, but that damages be assessed for such default on the basis established by the first additional article—the article which prescribed the duties to be paid on wood and other forest products.

And yet, in no line of the complaint is it alleged that there is now, or that there ever was, a tree, shrub, or plant of any commercial value in the entire State of Bermudez. Not a witness was produced by the Government who testified to any personal knowledge of the existence of any forests in the State; or that he had ever explored the same; or that he knew what wood or other products were contained therein; or whether the products thereof had any industrial use or commercial value; or whether exploitation was practicable in a commercial sense. The Government's record is almost an entire blank on this subject; for all it shows the State of Bermudez may be largely made up of swamps or jungles or it may be a treeless plain. Whatever conclusion may be reached in favor of the proposition that the forests of the State contain timber or other products of commercial value, it can only be established by inference from evidence suggestive in character, instead of direct or positive in assertion.

A custom-house report was introduced showing the company had exported during the years 1885 to 1887, inclusive, 44,440 kilograms of wood, and in 1893, 4,000 kilograms were exported, making 48,440 kilograms in all. A number of witnesses testified to the company's failure to canalize rivers, but they said nothing about wood or other forest products. A series of resolutions or memorials, adopted in the month of June, 1898—six years before this trial—by several municipal bodies in the State and addressed to President Crespo, expressing approval of the decree of January 4, 1898, which revoked the contract, were introduced. Some of these resolutions asserted that the company had not exploited the forests, that the contract had been a bar to the development of the country, and now that the President had canceled it, a revival of commercial activity was to be expected.

Some of these documents were in the shape of letters written in 1898 by residents of the State, in which it was stated that the company had not even explored the forests, it had not exploited the products thereof, or done anything toward the development of the country. All of these letters, resolutions, etc., were evidently the result of a propaganda carried on by the original promoters of the "Felicidad" claim and were intended to influence President Crespo not to set aside or revoke the decree of January 4, 1898.

None of them showed any personal knowledge on the part of the persons who adopted or wrote them as to the facts therein stated; none of them were verified by affidavit; they were wholly ex parte in character and abounded in conclusions of law and fact. As testimony they were unworthy of consideration.

Several depositions of witnesses, residents of the State, were read in evidence, but they were of the same general character as the resolutions above noted. Many of them related solely to the question of noncanalization of rivers; others related to the company's shipments of asphalt, and some of them asserted that the company had not exploited any of the natural products of the forests of the country. But none of these witnesses stated that they had ever been in the forests, or stated what they contained, or stated the name of a tree, a plant, or other natural product to be found in the forests which could be made the subject of exploitation. These depositions were simply to the effect that the company had not exploited any of the aforesaid products, leaving the record absolutely blank as to whether there were any such products in existence the exploitation of which was practicable or even possible.

The importance of this defect in the evidence is apparent when it is remembered that the contract contemplated that an exploration should first be made for the evident purpose of determining whether or not such products existed or whether they could be exploited to an advantage in a commercial sense. There was, therefore, no presumption that there were such products, and no obligation to exploit them would arise and no default could be adjudged until it was first shown by affirmative evidence that the conditions existed to which the obligation applied. The burden of proving these conditions precedent was upon the Government.

The only evidence in the record tending to show the kind of wood to be found in the forests, or tending to show that it had any industrial use or commercial value, was that made or furnished by the defendant itself, and this evidence is found in the letters and reports of the company to which reference has already been made. It is my understanding that the Government introduced all these reports but one, and, in so far as they are pertinent to the question under discussion, they may be considered as admissions made by the company.

On April 6, 1886, the company wrote the minister of fomento that by the end of the following month it would be ready to export wood in large quantities, thus fulfilling one of the articles of the contract.

On June 11, 1886, the company again wrote the minister that cutting of wood was being actively carried on, and that the company was only waiting for sailing vessels in which to ship large quantities to the United States and Europe.

As a part of its own evidence the company introduced a copy of a contract dated February 12, 1886, between it and one O'Brien, wherein the latter agreed to cut for the company timber of various kinds, including railroad ties and dimension timber of various sizes, and specifying the following kinds of timber, viz, red mangle, logwood, cambiba, caoba, gateado, red cedar, rosewood, etc.

And the company also identified, by the deposition of General Andrews, and introduced in evidence the report of Hamilton, which has been heretofore discussed, in which he reported the result of explorations made by him, and in which he said O'Brien had 30 tons of bark ready for shipment, also 10,000 railroad ties and 200 logs of red mangle. At another station on the San Juan River he reported that some 2,500 cubic feet of squared timber had been cut; also other timber, such as cabineto, mottled mahogany, gateado, etc., which he said was of superior quality and beautifully marked. And on the

Caripo River he reported another station where he had men at work cutting squared timber, red cedar, cabineto, gateado, etc.

The company also read in evidence the deposition of one Charles Arno, who had been a marine engineer in the company's service during the years 1886, 1887, and 1888, and was employed during that time on vessels engaged in transporting timber from Bermudez to Trinidad, such as railroad ties, mahogany, leopard wood, red cedar, rosewood, red mangle, campeche, dividivi, etc., all of which he said was exported by the company and in large quantities.

The company, therefore, by its own evidence supplied in part the defects in the Government's evidence, and it may be said that upon the whole evidence it was established that the forests of Bermudez did contain timber the names of which suggest a commercial value, i. e., mahogany, leopard wood, red cedar, rosewood, etc.; and it is further established by this evidence that the company not only found this kind of timber, but it commenced the work of cutting, shipping, and exporting it, and there the evidence stops.

If it be assumed that upon all the evidence the Government made out a prima facie case, both as to the existence of forest products of commercial value and the practicability of exporting the same, and the failure of the company to exploit them, or after having commenced to exploit, discontinuing such performance and therein failing to perform an obligation of the contract, the next query is, What excuse, justification, or other defense did the company make?

THE COMPANY'S DEFENSE.

The company made no defense on the facts. The only evidence it offered tended to confirm or strengthen the Government's side of the case, as has been heretofore noted. The company's defense was largely, if not solely, legal or technical. Indeed, its counsel opened his argument before the judge of first instance with the following statement:

> I can begin with the observation that the questions discussed in this suit are almost entirely questions merely of law, and consequently allow us, fortunately, to set aside unpleasant discussions regarding facts, which it is always difficult to find in the minutes with their true characters, and more so with all their various shades. In the field of pure law the data are absolutely certain and with unalterable stability are ever within sight.

The company's answer was almost entirely addressed to the construction or interpretation of the contract, viz:

> It is seen without difficulty and beyond a shadow of doubt that the rights granted to Hamilton are all, except that of exploration, not only discretionary, and consequently may be renounced by him and those claiming under him, but it is also doubtful and hypothetical, they being conditional, whether any of them except that of exploration can be exercised; and this is due in the very nature of things, for neither of the two contracting parties could affirm at the moment of making the contract that Hamilton would find exploitable products, and, much less, that on finding them it would be convenient or advantageous to him to exploit them.

The foregoing expresses the keynote of the company's defense, both in the pleadings and in the argument. The fallacy of the argument lies in the fact that the obligation to explore is admitted. It is true the obligation to exploit was based on the hypothesis that such products existed. If the exploration demonstrated that they did not exist, or if for any reason exploitation was impossible or

impracticable, such fact would relieve the company from the obligation. But once the existence of valuable wood or other natural products suitable for industrial or commerical purposes is shown to exist, as the evidence in this case tended to prove, then the burden passed to the defendant to justify such nonexploitation, or if exploitation was commenced and then abandoned, to justify such abandonment. This justification, if any there was, should have been alleged in the answer and proven by the evidence. In this case neither was done.

But in contracts from the nature of which it is apparent that the parties contracted on a basis of the continued existence of a given person or thing, a condition is implied, that if the performance becomes impossible from the perishing of the person or thing, that shall excuse such performance.[a]

What may be called practically impossible is placed on the same footing in law with absolutely impossible. It has been thus described: In matters of business a thing is said to be impossible when "it is not practicable;" and a thing is impracticable when it can only be done at an excessive or unreasonable cost. A man may be said to have lost a shilling when he has dropped it into deep water, although it may be possible by some expensive contrivance to recover it.[b]

In Mr. Carner's pamphlet, to which reference has been made, the following statement, on page 12, appears:

In 1887 and 1888 two expeditions of men expert in the exploitation of forests, who had been sent from the United States, were used in the exploration of the wooded lands for the purpose of determining the possibility of obtaining and exporting the valuable woods supposed to be therein. These expeditions, which incurred large expenses to the company, were, unfortunately, fruitless, inasmuch as the reports of their respective commanders in both instances were to the effect that the woods of value were so scarce and so disseminated that the effort to develop this branch of speculation could be considered impracticable so long as the company, in the course of its exploitations, had not opened additional ways of communication for bringing out the woods of the greatest value to the waterways that would be convenient of access.

As to the products of lesser importance, such as textile fabrics, dividivi, medicinal bark and gums, etc., they have also merited special attentión; quantities of all of the same have been sent to the markets of consumption, but it has been found that the circumstances were not, for the time being, such as to allow regular exploitation, owing to the lack of economical facilities to transport the same from the interior to the points of shipment.

The only natural product of any appreciable value was balata gum, and hundreds of persons are interested in its exploitation, without any right so to do under the concession, who, during the last five years, have shipped such quantities of the product referred to that they have amounted to the enormous sum of three to five million bolivars, as may be seen by the books of exports of the custom-house at Cano Colorado, Guiria, Iripa, Carupano, Cumana, and Guanta.

But in the trial of this case the company itself introduced affirmative testimony which at least tended to prove there was valuable wood in the forests. It also proved it commenced the exploitation of the same, and for some reason abandoned such work. The facts asserted in the Carner pamphlet were not proven; the reports of the experts, if any, were not offered in evidence, and no excuse or justification of any kind was offered beyond the contention that the privilege to exploit was optional and might be ignored by the company, in its discretion.

The attorney-general, in his argument upon this branch of the case, very aptly said:

The defendant could repel this charge if it had proved that there does not exist in the territory covered by the concession natural products other than asphalt which were capable of being developed, or that their development would have been so

[a] Chitty on Contracts, vol. 2, 11th ed., p. 1076. [b] Ibid., p. 1073.

difficult that it would have been prejudicial to the company; but nothing of this kind has taken place. On the contrary, Hamilton and his assignee began successfully to develop and export woods, pitch, and other products, as is deduced from the proofs put forward by the company itself; but on discovering the asphalt deposit situated at Guanoco, whose extent and advantageous conditions promised enticing profits, it restricted itself to develop only the asphalt, omitting to fulfill all its other obligations.

In reply the company made the further point that the contract specified no time in which exploitation was to commence, and until that time was fixed by judicial determination and had expired no default could be declared.

It is enough to say the company did commence of its own accord, besides, "if no time for performance is fixed by the contract, the implication is that a reasonable time for such performance is intended."[a]

CERTIFICATE OF PERFORMANCE—JULY 23, 1900.

In its answer the company alleged it had "carefully and perfectly executed not only the principal obligations entered into in that contract, but each and every one of them," etc. As proof of this averment it cited and relied upon a "decree," "resolution," or "certificate" given by the minister of fomento, dated July 23, 1900. This resolution recited that the company had fulfilled all of its obligations imposed by the Hamilton contract; that it had the right to exercise every right granted by that contract at any time within the twenty-five-year term, and that by virtue of the contract it had a preferential right to take title under the mining laws to asphalt deposits located within the territory covered thereby.

The company has made much of this "decree" or "certificate," not only in the trial of this case, but in its briefs filed with the Department of State. But in my opinion the decree has little or no value. It is inconsistent with the previous and subsequent acts of the same ministry. It was made at a time when the contest between the company and Warner & Quinlan was most vigorously prosecuted by both sides. They were then bombarding the ministry, so to speak, with protests and counter protests. On the very day this "certificate" was granted—July 23, 1900—this same minister appointed Llamoza, a surveyor, to make a survey of the disputed claims of the company and of Warner & Quinlan. The "certificate" was granted without any apparent hearing or inquiry into the facts, and was evidently granted at the solicitation of Mr. Carner.

If this minister believed the statements he made, if he believed the company had performed all the obligations of the contract, if he believed it had the exclusive or preferential right, by virtue of the contract to preempt mining claims under the mining laws in the State of Bermudez, why did he entertain the claim of Warner & Quinlan, and why did he, on the same day he made this declaration, order a survey to settle the pending dispute between these parties as to the boundaries of conflicting claims located in the territory covered by the Hamilton contract?

The attorney-general and the court denied that the minister had any authority under the law to make such a declaration, and said that at best it amounted to no more than the expression of a personal opinion.

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[a] Page on Contracts, vol. 2, sec. 1154.

WAIVER OF PERFORMANCE.

In the argument of the company's counsel, and in some of its briefs filed in the Department of State, the point is made that the Government had, by long years of silence and apparent acquiescence, permitted the company to confine its efforts to the exploitation of asphalt, and has thereby induced it to spend large sums of money in the development of this industry in the belief that the performance of this one obligation was accepted by the Government as a performance of the entire contract. It is said that the company expended more than $500,000 in the development of the asphalt lake;[a] that in so doing it made large and extended improvements, such as building wharves, docks, refinery, machine shops, sawmills, warehouses, and other buildings, also a railroad nearly 6 miles long, and an electric-light plant.[b]

During all this time the Government accepted the duties and taxes paid by the company on the asphalt. But suddenly it turned around, seized the company's property, adjudged the contract forfeited, and assessed damages for the breach of an obligation which had been ignored for years by both parties and apparently by common consent. It is therefore claimed by the company that the Government by its conduct, had, in equity, at least, waived the obligation to exploit forest products and to canalize rivers; and it is now estopped from claiming such forfeiture or assessing such damages.

There is undoubtedly much force in this contention; it appeals to one's sense of equity and fair dealing. But the wonder to me is that the company did not fully present this phase of the case, both by the pleadings and the evidence, to the court for its consideration and judgment. There is not a suggestion of this defense in a single line of the answer. The only approach thereto is found in the following extract:

> * * * but as all those supposititious obligations would be personal, engendering personal actions, and the plaintiff says that twenty-one years have transpired since they accrued, the company pleads the limitation enacted by article 1909 of the Civil Code then in force and by article 1964 of the present Civil Code.

The statute of limitations (twenty years) was not insisted upon, because under the evidence it did not begin to run until some time in 1886 or 1887, and the Government's suit was brought within the prescribed period.

Without entering into any extended discussion of the law as to waiver or estoppel in pais, which are closely related, and without discussing the question whether or not such a defense should be specially pleaded, as some of the authorities hold, I do think all the facts upon which the waiver or estoppel is based should have been fully and fairly disclosed in the evidence.

In the several briefs filed by the company in the Department of State, reference is made to the case of City of Atlanta *v.* Gate City Gas Light Company, (71 Ga., 106, 125,)[c] which case, it is said, is "an excellent illustration of the application of the principle of estoppel as against a governmental agency."

In that case the city of Atlanta sought to enjoin the gas company, which had a charter from the State, from laying mains in the streets

[a] Statement of wrongs done, etc., p. 34.
[b] Ibid., 1, 2.
[c] *Case of* N. Y. & B. Co. *v.* Venezuela, p. 173.

of the city in violation of the terms of an ordinance. The supreme court said, in substance, that the city had stood by and seen the company make an outlay of $140,000 in the exercise of its right, under its charter, and without objection on the part of the city to the use of the streets for the purpose of such expenditure; that without the use of such streets the enterprise would never have been undertaken, and to now debar the company from the continued use thereof would cause it to lose its entire outlay and involve it in irretrievable ruin. The court further said:

Upon every principle of equity this failure to notify the complainant of their intention until this heavy expenditure had been made would estop them. Such conduct is fraudulent in the eye of the law.

As an illustration of the application of the principle of estoppel as against a governmental agency, the above case may be in point; but the serious question is: Does it apply to the merits of the case under consideration? No waiver or estoppel was pleaded by the company and no evidence was introduced upon that subject. There is not a word of evidence in the entire record that the company ever built a refinery, a railroad, a wharf, a warehouse, a sawmill, or other appurtenance to the asphalt business, and there is no evidence that it ever expended $500,000 or any other sum in improvements in the development of the business or for any other purpose. The evidence began with the company's succession to the contract in 1885 and ended with its transactions from thence up to some time in 1887. No officer or representative of the company testified by deposition or otherwise; no showing was made of any facts or circumstances whereby the company was misled or induced to make expenditures or to incur obligations which it would not have done had it not been for the conduct of the Government. The question of waiver or estoppel rests solely upon the naked fact that the Government did not commence suit to cancel the contract until in the year 1904. It can not be said that during that time the Government made no complaint or gave the company no notice. The fact that President Crespo issued a decree, on January 4, 1898, canceling the contract because of the company's failure to exploit the natural products of the forests, was at least evidence of a complaint and notice of nonperformance.

While a condition may be waived by a party who has the right to avail himself of it, mere indulgence or silent acquiescence in the failure to perform is never construed into a waiver, unless some element of estoppel can be invoked.[a]

It must always appear in some way that a party intended to waive the performance of a provision in a contract, or his conduct must be such as would estop him from insisting upon its performance. *The facts showing waiver should be pleaded.*[b]

A waiver may also be implied, or at least presumed, from a failure to act or to insist seasonably upon a right, for it is required of everyone to take advantage of his right at a proper time. But where the silence or acquiescence is capable of being explained otherwise than as a waiver, *or the party is under no obligation to say or do anything, there is nothing to create a waiver.* And it may be safely asserted that mere indulgence or silent acquiescence is never construed into a waiver unless some element of estoppel can be invoked.[c] * * * A mere indulgence is never to be construed into a waiver of a breach of condition, and so are the authorities.[d]

The plaintiff can not show a waiver of performance or a modification of any part of a contract without alleging it. So also where the defendant relies on a waiver of a stipu-

[a] Royal *v.* Aultman, 116 Ind., 424; 19 N. E. Rep., 202.
[b] Bailey *v.* Bond, 77 Fed. Rep., 403, 410.
[c] Am. & Eng. Enc. Law, vol. 29, pp. 1105, 1106.
[d] Gray *v.* Blanchard, 8 Pick., 283, 291.

lation in a contract sued on he must plead it. And the facts showing a waiver of performance of a provision in a contract must be specially pleaded.[a]

The facts supporting an estoppel in pais must be clearly made out by the party relying upon it. * * * It must be shown that the party pleading the estoppel acted to his prejudice on such representations and that he will be prejudiced by allowing them to be disproved.[b]

It therefore seems to me that, so far as the "main issue" is concerned, upon the whole record the Government was entitled to a judgment declaring the Hamilton contract forfeited for the nonperformance of obligations therein contained, the defendant company offering no sufficient excuse or justification for such nonperformance.

THE CARNER PAMPHLET.

Reference has heretofore been made to and extracts have been quoted from a certain printed pamphlet, the authorship of which is attributed to Mr. A. H. Carner, a copy of which was filed in the Department of State as a part of the bound volume entitled "Case of New York and Bermudez Company *v.* Venezuela."

This pamphlet is entitled "The New York and Bermudez Co.—Discussion of its Rights Against the Illegal Executive Decree Issued on January 4, 1898," etc. It was printed in Caracas in the year 1889, soon after the high federal court set aside the executive decree of President Crespo wherein he declared the Hamilton contract canceled, etc. The pamphlet is dedicated in effusive terms of praise to the "Honorable General Ignacio Andrade, President of the Republic," et al., which dedication is signed "A. H. Carner, managing director, Guanoco (Venezuela), April, 1899."

In the brief filed by the company in the Department of State, entitled "A Statement of the Wrongs done to the Company," the following statement in reference to the aforesaid Carner pamphlet appears, page 27:

It will illustrate the hopelessness of the difficulties with which the company is obliged to contend in the defense of its rights in the Venezuelan courts to narrate how it was prevented from including in the record of the present "judicial" proceedings the notorious fact of Mr. Carner's authorship of the printed statement from which the foregoing extracts are taken.

The company's counsel in Caracas asked Mr. Carner, while testifying as a witness on November 24, 1904, whether the aforesaid publication was made by his order and authority. Though it is perfectly well known by many persons that Mr. Carner speaks both Spanish and English fluently, he asserted that he did not possess a sufficient knowledge of the Spanish language to enable him to answer this question without the assistance of a sworn interpreter. The company's counsel then pointed out that Mr. Carner had already answered in Spanish a portion of the inquiries put to him, and requested that if an interpreter was necessary the court should appoint Dr. Andres J. Vigas, a friend of Mr. Carner's, who was present in court and had been conversing in English with the witness while he was testifying. The court refused to grant this request, and suddenly declared that the examination was ended. No conceivable reason can be assigned for this refusal, except the wish and design to protect Mr. Carner from admissions which would have destroyed the value of his testimony and the case of the Venezuelan Government.

The foregoing quotation is substantially true as to the facts therein stated. Mr. Carner was called as a witness by the company. He was asked the question whether the publication had been made by his authority. He evaded the question by saying his knowledge of Spanish was not sufficient to enable him to make the proper explanation

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[a] *Cyclopædia* of Law and Practice, vol. 9, 727.
[b] *Enc. Pleading* and Practice, vol. 8, 10, 11.

without the assistance of an interpreter. This answer was undoubtedly a subterfuge. Mr. Carner has long resided in Venezuela and is perfectly familiar with the Spanish language. The court refused to appoint an interpreter, and said the inquiry had already been sufficiently answered.

There is no doubt but Mr. Carner was much embarrassed by the inquiry. The pamphlet abounds in extravagant praise of the company and in vehement denunciation of its opponents; and the contrast between Mr. Carner's attitude toward the company at the time this pamphlet was written and his hostile attitude toward it at the time of this examination was so marked as to provoke embarrassment when he was confronted therewith. The court saw his embarrassment and relieved him therefrom by abruptly terminating the examination. In so doing the court manifested a disposition to favor or protect Carner, which has been construed as indicating favoritism toward the Government and its adherents.

At the same time the incident is of little importance. The pamphlet had already been identified, its authorship admitted, and the authority for its publication stated by a previous witness. Dr. Andres J. Vigas, a former attorney for the company, testified that he was the author of the pamphlet, that it was written and published by the authority of Mr. Carner, who was then the managing director of the company, but that at the time the pamphlet was published Carner was in the United States and the company paid the expense of publication.

Under no rule of evidence that prevails in the courts of our country would this pamphlet have been admissible. Although published in the name of Mr. Carner, and possibly under his direction, it was nevertheless a declaration made out of court, by and for the company, and in its name. The company could not use its own ex parte statements, made in its own interest, as evidence in its behalf. It is true, there seems to be no rules of evidence in the courts of Venezuela—everything goes in, from unidentified telegrams to resolutions of municipal councils—but no substantial error can be well assigned on this part of the record.

If Mr. Carner had testified for the Government and had made statements on the witness stand different from the statements made, or authorized to be made, in the pamphlet, on cross-examination, he might have been very properly interrogated in reference to the latter, or the foundation for his impeachment as a witness might have been found therein. But Carner was not a witness for the Government; he was called by the company and was simply asked about the pamphlet.

The pamphlet is an extravagant, flamboyant piece of literature; it is boastful in tone and declamatory in style; but it contains some interesting statements of fact, which, if they had been proven in the trial, would have had an important bearing on the issues involved. Whether or not the company intended to prove these facts by the pamphlet does not appear. Its counsel made no offer of proof, made no statement to the court as to wherein the pamphlet was competent, material, or relevant, and called the attention of the court to nothing therein that had any bearing on the case.

ASSESSMENT OF DAMAGES.

Following the "main issue" to its conclusion, the next step for consideration is the assessment of damages.

In its complaint the Government prayed that the company be adjudged to "pay the nation for the damages which have been caused to the latter by the failure to execute the said contract, according to the just finding of appraisers, and calculated in accordance with the basis established by the first additional article."

The "first additional article" referred to specified the duties, royalties, or taxes which the company was to pay the Government on wood, dyestuffs, etc., exploited or exported.

The Government also alleged in the complaint that the contract was a lease, and the subject-matter thereof was "the enjoyment of all the natural products existing on the wild lands of the former State of Bermudez."

The Government also alleged that one of the obligations imposed by the contract in the "second additional articles" was the canalization of rivers, etc.; that the company had not performed this obligation, and the Government introduced direct evidence which at least tended to prove a breach of this alleged obligation, but it asked for no damages on that account. The claim for damages was, therefore, solely based on the alleged breach of the obligation to exploit the products of the forest.

Subsequent to the rendition of the judgment of the court whereby the contract was adjudged forfeited and canceled, the court appointed three appraisers to assess the damages.

These appraisers have made their report. The latter was returned to the court subsequent to my departure from Venezuela. A copy of the report has been furnished me since my return home. The report assessed the total damages at 1,065,000 bolivars, or $213,000. It is my understanding the company has filed exceptions to this report, which are still pending before the court. What the action of the court thereon will be can only be conjectured. However, a few observations in reference to the report will not be out of place.

It is to be remembered that the Government in the trial of the "main issue" introduced no evidence showing, or even tending to show, the extent of the forests in the State of Bermudez, if any there were, or what kind of wood they contained, if there was any wood, or whether or not the same had any commercial value; and as to other products there was absolutely no evidence at all. The only evidence that raised any presumption as to the existence of wood was the reports of the company and that of the custom-house, which showed the company had, in the beginning of the contract term, exported some wood. But this evidence did not furnish any basis for determining what wood, or what kind of wood, or what other products remained. There was no data furnished by this evidence upon which any computation of damages under the first additional article, or under any other article, could be made.

The appointment of appraisers to assess the damages corresponds somewhat to the old common-law practice known as the assessment of damages by writ of inquiry. In that practice an interlocutory judgment was first entered to the effect the plaintiff ought to recover *damages, but* the court did not know what damages had been sus-

tained. Therefore a writ was issued to the sheriff commanding him to summon a jury, that inquiry be made into such damages, and that the verdict in reference thereto be returned into court. The sheriff then summoned a jury, and an inquiry was made "under very nearly the same rules of law as upon a trial by jury at nisi prius."[a]

Waiving discussion of what the measure of damages may be in a case of this kind, and accepting the first additional article as the proper basis for estimating the same, it must be true that such damages should be made reasonably certain by the proof of actual facts which present data for a rational estimate of their amount.

Compensation for the legal injury is the measure of recoverable damages. Actual damages only may be secured. Those that are speculative, remote, uncertain, may not form the basis of a lawful judgment. The actual damages which will sustain a judgment must be established, not by conjectures or unwarranted estimates of witnesses, but by facts from which their existence is logically and legally inferable. The speculations, guesses, estimates of witnesses, form no better basis of recovery than the speculations of the jury themselves. Facts must be proved, data must be given which form a rational basis for a reasonably correct estimate of the nature of the legal injury and of the amount of the damages which resulted from it before a judgment of recovery can be lawfully rendered. These are fundamental principles of the law of damages.[b]

But the appraisers followed no such rule as above laid down—a rule based on common sense; one which must be recognized by the civil law as well as by the common law. The report of the appraisers is a curious piece of legal literature. In our country it is a common practice to make estimates upon the amount of merchantable timber contained in a forest or body of standing timber. Experts go through the forest, count the trees, make estimates as to the product thereof, and report as to the value of the same. But in this case nothing of that kind was done. No witnesses were heard, no investigation into actual conditions was made, and no data were presented upon which an estimate of damages could be made with any degree of certainty.

The appraisers report that they studied the decision and the documents relating thereto and the data found in official publications. It does not appear that they went to Bermudez, or that they were ever in the State, or that they had any personal knowledge of the conditions that existed there. They say the forests abound in valuable woods of many kinds, and they assume to specify them. Then they take the official publication of exports of wood, dyestuffs, gums, etc., made in the year 1883 from Maracaibo, a seaport located in another State, and like reports of exportation of rubber from Ciudad Bolivar, in 1881 and 1882—a city located on the Orinoco River and far distant from Bermudez—and they make a guess, a speculative estimate, of what might have been or ought to have been exported from Bermudez in a period of fifteen years. Then they estimate what revenue the Government would have received if the products of the kind and in the quantity named had been exported. There is no evidence how the forests of Bermudez compared with those tributary to Maracaibo. There is not a scintilla of evidence in the entire record that there is any rubber in the State, and yet these appraisers assume to make estimates in reference thereto by drawing deductions from the exports made from other and far-removed parts of the country.

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[a] Sutherland on Damages, 3d Ed., vol. 2, sec. 427.
[b] Central Coal and Coke Co. *v.* Hartman, 111 Fed. Rep., 96, 98.

They base their estimates upon the sections of Cumana, Barcelona, and Maturin, which they say formed the old State of Bermudez; but the contract expressly excepted or excluded Barcelona from the provision of the contract as to the exploitation of wood; the company had no right to exploit wood from that section, but that made no difference to these appraisers.

In my judgment, this assessment of damages is a travesty, a farce; and it is not justified by any principle of law, by any rule of practice known to the courts of any civilized country, or by any principle of common sense or common justice.

SEQUESTRATION ISSUE.

On July 20, 1904, the attorney-general instituted the suit under consideration by filing the complaint in the high federal and cassation court. With the complaint he filed a telegram, dated April 22, 1904, from one R. Velazquez, addressed to Dr. Lucio Baldo, the minister of fomento, in which the sender informed the minister on "trustworthy data" that the company had not canalized any rivers or exploited or exported the natural products of the forests, other than asphalt; also three ex parte depositions or affidavits given by three several parties, who respectively stated that they had at different times visited some of the rivers in the State of Bermudez, and so far as they had observed there had been no canalization of any of such rivers, at least they saw no evidence thereof.

On the same day the petition was filed the court certified it to the judge of first instance.

On the next day, July 21, the judge ordered a summons to be issued for the Bermudez Company to be served on its local representative, which was made returnable on the tenth working day after service.

In the complaint the attorney-general alleged the contract in question was a lease, "the subject-matter of which is the enjoyment of all the natural products existing on the wild lands of the former State of Bermudez." He further alleged that it clearly appeared from the telegram and the depositions filed with the complaint that the company had failed to make improvements, which, by the contract, it was obliged to make, such as canalization of rivers. The attorney-general, in and by his petition, moved for a decree of sequestration of the mine which the company exploited at Guanoco, together with all the apparatus and appurtenances used in such exploitation, to answer the result of the suit. This order he asked for under the seventh clause of article 373 of the Code of Civil Procedure.

On July 21, the same day the summons for the defendant was ordered, the attorney-general appeared and suggested to the court that in the event it granted the order for sequestration, Mr. Ambrose H. Carner be appointed receiver, and that a commission to execute the order be directed to the local judge of Cumana.

On this same day the judge of first instance, after citing the aforesaid depositions, said he found the "extreme circumstances" required by law fully proved, and therefore granted the order for sequestration, and directed that a commission to execute the same be directed to the aforesaid local judge. He further appointed Carner receiver, and ordered that a citation issue for him.

Early the next morning, July 22, at 9 a. m., Mr. Carner appeared in court, accepted the appointment, and was sworn to faithfully discharge the duties thereof, but no bond was required.

It is apparent the commission to execute the order of sequestration was also issued that same morning and given to Carner to be delivered by him to the local judge at Cumana. It is to be observed that subsequent to the granting of the original contract the old State of Bermudez was divided, as I understand it, into three new States or parts of it were included in three different States, namely, Cumana, Maturin, and Barcelona. The mines were located in what was then the State of Cumana.

The return of the summons issued for the company shows it was served on Robert K. Wright, the local managing director, at 2.30 p. m. of July 22, 1904. The petition was filed on July 20. The order granting sequestration and appointing the receiver was issued on July 21, and on the morning of July 22 the receiver accepted the appointment, qualified by taking oath to perform the duties of his office, received the commission to execute the order, and immediately proceeded on his way to Guanoco. During all this time the company had no notice. Its representative was living in Caracas, where the court is located, but he was not served with notice until in the afternoon of the day on which Mr. Carner started for the asphalt mines with the order to take possession thereof.

At 4.45 p. m. of this same day Mr. Wright, the managing director of the company, appeared in court, and in a petition filed therein said he had unexpectedly learned of the commencement of the suit, of the order of sequestration, and the appointment of the receiver. He protested against the proceeding, denied that the contract was a lease, or that the Government was entitled to the extraordinary relief asked for based on such a construction of the contract, and said it was of the utmost importance that the question be determined at once whether or not the contract was a lease and whether or not the Government was entitled to this particular relief. He represented to the court that under article 368 of the code the granting of the order of sequestration was discretionary with the judge; that the damages which the company would suffer by the sequestration would be very great, and therefore he prayed the judge to review the subject as a matter of justice and to revoke the order. The judge reserved a decision on this petition until July 25, when he said that, without entering into any details in regard to the arguments presented, he found the grounds on which the order was based sufficient to justify the same.

Mr. Carner arrived at Cumana on July 24 and presented to the local judge the commission of the fedral court at Caracas directing the sequestration of the company's property. The local judge entered an order reciting the receipt of the commission and declared that the court "would constitute itself" at all places necessary in order to give possession of the property to the receiver, and to that end the support of the public troops would be requested should circumstances require. It was further noted that the order was entered in the presence of Mr. Carner and on his petition.

On July 28 the local judge, accompanied by Mr. Carner and by a representative of the attorney-general, appeared at Guanoco on a gunboat and with a military force and took possession of the company's property. It is to be observed that according to the return

made by the local magistrate, Carner not only took possession of the mine, but also took possession of the company's personal property, consisting of office and household furniture, books of account, papers, moneys in the safe, provisions, stores, tools, machinery, and supplies of various kinds, and about 1,000 tons of raw asphalt.

Conflicting stories are told by the parties in interest as to how this order was executed. Affidavits and statements of officers and employees of the company have been filed in the Department of State which show that considerable force was used by the troops in taking possession of the company's property. The representatives of the Government deny that any force was used. They contend that the soldiers were taken along in the expectation that the execution of the order would be resisted and that force would be required, but that the officers of the company complied with the mandate of the court, and no violence or force was used or necessary.

The alleged authority for this sequestration proceeding is found in the seventh clause of article 373 of the civil code of procedure, which is as follows:

ARTICLE 373. Sequestration shall be decreed—

First. Of the chattel, the subject-matter of the action, when the defendant has no responsible property, and it is with reason feared that he may conceal, alienate, or deteriorate it. * * *

Seventh. Of the property leased, if the defendant is sued for default in payment of the rental; or on account of the property becoming deteriorated; or on account of having failed to make improvements to which he was bound by the contract, provided any of the circumstances be proved in the manner indicated in article 3C

And article 368 reads as follows:

ARTICLE 368. At any stage or epoch of the cause whatsoever, if there is proof of the right sued for, although it be by the depositions of witnesses, when this proof is admissible according to the civil code, any of the parties may request, according to the case, and the judge may grant—

First. Prohibition to alienate the subject-matter of the dispute.

Second. The sequestration of determinate property.

Third. Deposit of security, and in default thereof, the attachment of sufficient of the propery.

It is difficult, if not impossible, to construe the code by any rule of interpretation adopted and made known by any previous decisions of the courts of Venezuela. There are no published or public reports of such decisions. In all the arguments made by the counsel on both sides of this case no citation was made to any former decision of the court on the subject or to any rule of construction adopted thereby. They argued the case and the court decided it as though the questions involved were new and raised for the first time in the history of the court.

Accepting the translation above given as expressing the thought and purpose of the code, what is the rational construction thereof? Article 368 says the judge may grant sequestration of determinate properties, when there is proof of the right thereto, and a party requests it, at any stage of the cause.

The ground upon which the right to the writ is predicated is expressed in article 373. The right is to sequestrate "the property leased" when the lessee has failed to make improvements required by the terms of the lease. The code does not say what kind of improvements, or where the same are to be made, but the reasonable interpretation of both articles of the code, construed together, is that

where "determinate properties"—that is, a "distinct," "definitely limited," "fixed," "specific"[a] property is leased and the lessee agrees as one of the express covenants of the lease to make certain improvements thereon, then the lessor has a right to ask for the sequestration "of the property leased" in case the lessee fails to make such improvement.

The next question is, What was the "property leased" by the Hamilton contract, assuming it was a lease? The attorney-general, in the complaint, made the following allegation, which is the only one on the subject:

> And as to the contract made with Mr. Horatio R. Hamilton, it is a contract of *lease, the subject-matter of which is the enjoyment of all the natural products existing on the wild lands, etc.*

The "property leased," according to the construction thus placed on the contract, was no determinate, definitely limited, fixed, or specific property, but an incorporeal right of enjoyment—that is, the right to take from the wild lands of a given State certain natural products for and during a certain term of years. How then can it be said that the parties contemplated that any improvement was to be made on "the subject-matter" of such a so-called lease?

Again, construing these several articles of the code together, it seems a reasonable interpretation to say they mean that where "determinate" property is leased and the lessee fails to make required improvements, the lessor is entitled to a sequestration "of the property leased," and nothing more: that is, to a seizure of the determinate property involved in the controversy, the same to be held by the sequestrator until it shall be adjudged who is entitled thereto.

> *Sequestration—In contracts.*—A species of deposit which two or more persons engaged in litigation about anything make of the *thing* in contest with an indifferent person, who binds himself to restore it when the issue is decided, to the party to whom it is adjudged to belong. (Louisiana Code, art. 2942.)[b]
>
> A mandate of the court ordering the sheriff, in certain cases, to take in his possession and to keep a *thing* of which another person has the possession until after the decision of the suit, in order that it be delivered to him who shall be adjudged entitled to have the property or possession of that *thing*. That is what is properly called a judicial sequestration. (Louisiana Civil Code, arts. 2941, 2842.)[c]

The attorney-general, in his complaint, based his claim to a sequestration on the seventh clause of article 373—that is, to a seizure "of the property leased," or "the subject-matter" of the lease; which in this case was an intangible, indeterminate, incorporeal right of "enjoyment," according to his own definition. Was he entitled to a writ of sequestration under the article of the code which he invoked? Was a sequestration necessary? A judgment of forfeiture of the contract was of itself sufficient to interrupt, terminate, or destroy the further exercise of the right of enjoyment. There was no showing of want of property on the part of the company, no suggestion it had concealed or was about to conceal, alienate, or deteriorate its property. Besides, the code itself in its letter and spirit contemplates the seizure of only determinate property which is the subject of the lease, to be held pending the determination of the controversy. No right was given to seize, to use, enjoy, and consume other property which was

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[a] Standard Dictionary, vol. 1, p. 500.
[b] Bouvier's Law Dictionary, vol. 2, p. 982.
[c] Bouvier's Law Dictionary, vol. 2, p. 982.

not "property leased," or in any sense the thing in controversy. Yet in this case the Government not only seized the asphalt lake, but it seized the company's moneys, account books, household and office furniture, provisions, stores, supplies, machinery, tools, and all its personal property of every name and description, and is not holding the same in custody as contemplated by the code, but is using and consuming them and is actually carrying on business therewith in competition with the company, the owner of the property. This was a seizure which went far beyond the authority of the code; and which, even on the theory of the contract advanced by the Government, was not only unnecessary, but harsh, oppressive, and unjustifiable.

The next question for consideration is the alleged obligation to make improvements, the nature thereof, and wherein the company made default in respect thereto.

THE SECOND ADDITIONAL ARTICLES.

The only ground for sequestration alleged by the Government was that the company had "omitted to make improvements which by the contract it was bound to make, such as the canalization of the rivers of the State." The only obligation to canalize rivers is found in what is called the "second additional articles," entered into by the Government and Hamilton on May 30, 1884.

The original contract was entered into on September 15, 1883. It was approved by Congress on June 5, 1884, five days after the date of the second additional articles. It is fair to assume that the original contract had been reported to Congress and it was before that body prior to the time the second articles were entered into. It is not disputed that the original contract was approved by Congress, that it was published in the Official Gazette, and it became effective as a public law without the second articles being a part thereof or attached thereto.

The company contended on the trial that the second additional articles were never approved by Congress, as the law then required, and therefore they never became effective or binding upon the parties.

The attorney-general in reply introduced in evidence an omnibus report made by the minister of fomento to Congress, dated February 19, 1885, the next year after the original contract was approved. This report was a general résumé of the transactions of the President through the agency of this ministry. In this report reference was made to the original contract and to the additional articles dated May 30, 1884. No specific action was taken by Congress upon these articles. The only sort of an approval was a general legislative decree enacted by Congress, dated April 17, 1886, wherein Congress approved all the acts of President Crespo during the two years from 1884 to 1886. And this approval, the attorney-general contended, was sufficient to validate the second additional articles. I have not given much consideration to this phase of the question, because there are other facts of more controlling importance which in my judgment are decisive as to the rights of the parties.

By these articles Hamilton agreed to open a channel in one or more rivers of the State, beginning with the Cano Colorado and the Guarapiche, as far as Maturin, for purposes of exportation and importation. *In consideration* whereof the Government granted Hamilton the

"exclusive right of navigating the rivers thus made navigable, and to levy a tax, to be fixed by agreement with the Government, on ships and boats navigating them, as soon as they shall be made navigable." Hamilton was to have the same rights if he built a railroad.

These "additional articles" made no reference whatever to the original contract or to the subject-matter thereof, and they were in no sense germane thereto. The canalization of the river Guarapiche and the opening of navigation to Maturin "for exportation and importation" had nothing whatever to do, so far as the pleadings and the evidence in this record show, with the exploitation of asphalt or other natural products. The obligation expressed in these "additional articles" was independent of and distinct from the obligations of the original contract. The latter was complete in and of itself; it was signed, sealed, and delivered, approved by Congress, and became a public law without these additional articles.

The obligation of the "additional articles" carried with it a compensation peculiar thereto, viz, the exclusive right to navigate the rivers canalized, or to levy a tax on the vessels of others who might navigate them. The high federal court, in one of its opinions in this case, said that the canalizing of the rivers was "a work for which the Government intended to pay by granting him (Hamilton) 'the exclusive right of navigating the rivers he might canalize.'" These articles then created their own obligation, furnished their own compensation, and in every sense expressed a contract entire, severable from the original contract. The mere fact they were called "second additional articles" did not make them a constituent part of the original contract.

Therefore a breach of the covenants in the "second additional articles" can not be assigned as a breach of the original contract. The "improvement" provided for by these additional articles can not be said to relate to the subject-matter of the original contract as defined by the Government's complaint or to be such an improvement as is contemplated by article 373 of the code, which permits sequestration.

Besides, there is another fact disclosed in the evidence that eliminates the consideration of these second additional articles from the case and destroys them as a foundation for sequestration or for a judgment of forfeiture.

The canalization of the rivers was, under these articles, to begin with the Cano Colorado and the Guarapiche—both are parts of the same river—up to Maturin. The evidence shows that about the first work the company did was to commence surveying this river preliminary to its improvement. Before anything substantial was done in that direction Hamilton, as manager for the company, wrote a letter, without date, to the minister of fomento in which he called attention to the exclusive right of navigation granted the company in consideration of the proposed improvement to the river. He asserted that the company had already canalized the river up to the village called Cano Colorado, where it had established wharves, depots, etc., in the execution of the contract.

He called the attention of the minister to the fact that he, Hamilton, had read in the Official Gazette, dated the 28th of the preceding month, an official announcement that the Government had granted one Felipe Pinelli a concession of certain navigation privileges, including the right of navigation from Maturin to certain named

ports. As navigation from Maturin could only be made possible by the canalization of the Guarapiche River, Hamilton considered this last-named concession a violation of the exclusive rights granted him, or the company as his assignee, on said river. He considered this concession to Pinelli a menace to the rights of the company and in conflict with the obligation of the Government. He asked that the attention of the President be called to this situation in order that justice might be done.

On June 14, 1887, the minister replied to the foregoing communication. He said the President found there was no conflict, and could be none, between the Pinelli contract and the contract with the company, because Maturin was a free port and open to general commerce, its traffic could not be granted exclusively to anyone, and the rights of the company only extended to the navigation of interior rivers which it might canalize to the satisfaction of the Government.

The obligation in the second additional articles was to canalize one or more rivers, beginning with the Guarapiche up to Maturin, for which work, as the high federal court said, the Government was to pay Hamilton by giving him the exclusive right of navigation thereon, or the right to levy a toll on other boats or vessels which used the channel, that he, or the company, with great labor and expense, might make. Here was a direct repudiation of the contract by the Government, a notice to him and to the company that if they channeled the river the promised compensation was withdrawn and would not be granted. From that time on the company apparently abandoned any effort to canalize this river, and in so doing it was clearly justified. Apparently both parties thereafter regarded the obligation as nonexistent. That this is true is confirmed by the following facts:

General Crespo was President when the Hamilton contract and the additional articles were executed; also when the Pinelli concession was granted, and when the foregoing notice was written. He was again President on January 4, 1898, when he issued the decree heretofore mentioned, wherein he declared the Hamilton contract canceled.

He made this decree in response to a petition filed with him the previous day by one Doctor Ayala, the attorney and agent of the original promoters of the "Felicidad" claim. In this petition the attorney set forth at length that the company had not canalized the rivers, beginning with the Guarapiche, as it was obligated to do by these additional articles, and therefore, he alleged, it had forfeited the contract.

But President Crespo evidently had in mind his own repudiation of the additional articles. He decreed the contract canceled, but for reasons other than those assigned by Ayala. He ignored the alleged failure to not canalize the rivers, and based his decree entirely on the failure to exploit the forest products.

The obligation to canalize the rivers as expressed in these additional articles was made the basis for the sequestration proceeding. No evidence was introduced and no claim was made on any other ground. It is my judgment that it was a forced construction of the contract to call these additional articles a part of the original contract; it was an illogical and indefensible interpretation of the code to say that *such canalization* was an improvement agreed to be made upon the

subject of the contract, even if the latter was a lease, and that for a failure to so improve the rivers a sequestration of, not only the asphalt mine itself, but all of the company's personal property, could be ordered. And in view of the fact that the Government itself had long years before expressly repudiated the second additional articles, the use of those articles to form a basis for a sequestration, without previous notice or a hearing, and the execution of the order with an armed military force, was an unjustified perversion of the forms of law, an abuse of judicial authority, and an act of notorious injustice.

WAS THE HAMILTON CONTRACT A LEASE?

In order to make the sequestration of the company's property have the semblance of legality, the Hamilton contract was called a lease, and, the right of sequestration being an incident to a lease, it was necessary to call the second additional articles a part of the original contract and the canalization of the rivers an improvement provided for in the lease. If my view of the sequestration proceeding is correct, it is immaterial whether the contract is or is not a lease. But a few observations on that point may not be out of place.

The ordinary definition of a lease is stated as follows: "The legal understanding of a lease for years is a contract for the *possession and profits of land* for a determinate period, with the recompense of rent."[a] The characterization of the original contract as given in the Government's complaint does not meet this definition of a lease. The complaint said the subject-matter of the contract was "*the enjoyment* of all the natural products existing on the wild lands of the former State of Bermudez." The contract did not convey the possession of any determinate property or give an exclusive interest in any land; it only granted the incorporeal right to explore and exploit the natural products in a vague, indefinite, and uncertain territory; it was only a right of enjoyment, a right to take and use such products; these products were, as the complaint stated, the subject of the contract; the use of the lands was only temporary and an incident to the right to take the products therefrom. The Government still retained possession and control of wild lands for all other purposes. The contract was, therefore, a license, irrevocable and coupled with an interest. This view of the contract is confirmed by the following leading cases on the subject:

In the case of Funk *v.* Haldeman (53 Pa. St., 237) a certain contract was under consideration which one of the parties to the suit insisted was a lease. This contract is very similar to the Hamilton contract, and if the principles which the court applied in determining the nature of the contract in this Pennsylvania case are sound, there is no reason to doubt that the Hamilton contract amounted to a license and not a lease.

In the Pennsylvania case the contract read as follows:

In consideration of $200, the receipt whereof from Funk is acknowledged, McElheny and wife grant, bargain, and sell unto the said Funk, his heirs and assigns, the free and uninterrupted use, privilege, and liberty to go on to any part of the 200 acres now owned, occupied, and in possession of the party of the first part, it being in the north part of Cornplanter Township aforesaid, and lying each side of Oil Creek, for the purpose of prospecting, digging, excavating, and boring, and erecting thereon

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[a] United States *v.* Gratiot, 14 Peters, 526.

frames, vats, engine, or anything necessary for the prospecting, experimenting, or searching to find any ore, oil, salt, coal, or other minerals, and of taking the same out of the earth; also, we, the said party of the first part, do hereby grant unto the said party of the second part the right, privilege, and exclusive use of 1 acre of land at and around each well or pit, where the indications are such as will justify in operating or experimenting; and also the said party of the second part, his heirs and assigns, are to have free ingress, egress, and regress on and over said land by himself, hands and teams, tenants, and undertenants, occupiers or possessors of the said springs, mines, ore, or coal beds, in common with the said party of the first part, their heirs and assigns.

Then followed the covenants of Funk that he would use no more lands for road or ways than should be absolutely necessary; that he would commence operating the next spring, and if he succeeded in finding or procuring any oil, ore, salt, coal, or other minerals, then in addition to the $200 paid, he agreed to give the one-third part of all that was taken out of the earth, on the premises, in barrels to be furnished by McElheny at the pit's mouth. In construing this contract, the court said:

The interest granted to Funk is an incorporeal hereditament. The first word that occurs in a definition of an incorporeal hereditament is "right"—a right issuing out of a thing corporate, or concerning, or annexed to, or exercisable within the same. It is no part of the corporate thing that remains as perfect after the right has issued or been exercised as before. The incorporeal hereditament, always a feature of contract, is a collateral incident which may belong or not belong to the thing corporate without any visible alteration therein.

When this right takes the form that is designated in the classification of incorporeal hereditaments a "common," it is called a profit which one man hath in the land of another. Not ordinarily an exclusive profit, for in the instance of common of pasture, though an owner of the soil grant another common of pasture, sans nombre, yet the grantee can not use the common with so many cattle that the grantor shall not have sufficient common for his own cattle. (1 Coke Litt., 122.)

Recurring now to the very language of the several grants which I have quoted from the deeds, it will be seen to amount neither to a lease nor a sale of the land, nor of any of the minerals in the land. No estate or property either in the soil or minerals was granted. If the grantor's dominion over these was not as complete after the grants as before, it was because of the covenants which restrained it and not because of any title to either soil or minerals that had vested in Funk.

But here the right granted was to experiment for oil; if found, to sever it from the soil, and to take it, on yielding a third to the landlord, as a chattel—not as any part of the realty. And the only possession to which the grantee was admitted was such as was necessary to the exercise of this right. The exclusive possession even of the acre about the pit's mouth was to terminate with an abandonment of the experiment. And the consideration for this right was not in the $200 paid by Funk (that was only for the entry to experiment), but was to be measured by the oil taken from the ground.

If Funk acquired no estate in lands or minerals, what is his right to be denominated? I answer, a license to work the lands for minerals. Bainbridge, in his work on the Law of Mines and Minerals, page 246, says: "There is a great distinction between a lease of mines and a license to work mines. The former is a distinct conveyance of an actual interest or estate in lands, while the latter is only a mere incorporeal right to be exercised in the lands of others. It is a profit a prendre, and may be held apart from the possession of land. In order to ascertain whether an instrument must be construed as a lease or a license it is only necessary to determine whether the grantee has acquired by it any estate in the land in respect of which he might bring ejectment. If the land is still to be considered in the possession of the grantor, the instrument will only amount to a license, and though the licensee will certainly be entitled to search and dig for mines according to the terms of the grant, and appropriate the produce to his own use on payment of the stipulated rent or proportion, yet he will acquire no property in the minerals till they are severed from the land and have thus become liable to be recovered in an action of trover."

In the coal-mining districts of Pennsylvania leases for terms of years are very common. They are estate in land. The rent is usually measured by the tons taken, but the tenant is bound to a minimum production annually, and the transaction amounts to a sale, at a price per ton, of the coal in the premises, and constitutes an *interest in* the lessee in the nature of a corporeal hereditament.

But though we hold the papers in this instance to constitute a license and not a lease, it is a license coupled with an interest—not a mere permission conferred, revocable at the pleasure of the licensor—but a grant of an incorporeal hereditament, which is an estate in the grantee and may be assigned to a third party.

The doctrines as announced in the above case have been applied by the courts of other States. I have been unable to find a case where the court had this question to decide and failed to apply the rule as laid down by the Pennsylvania court. The following cases are in line with the foregoing decision.

Speaking of the right to explore and exploit, Chief Justice Abbott, in Doe *v.* Wood (2 Barn. & Ald., 736), said:

Instead of parting with or granting or demising all the ores, metals, and minerals which were then existing within the lands, its words (the deed granting the mining license) import a grant of such parts thereof as should, upon the license to search and get, be found within the described limits, which is nothing more than the grant of a license to search and get (irrevocable, indeed, on account of its carrying an interest), with a grant of such ore as should be found and got, the grantor parting with no estate or interest in the land. If so, the grantee had no estate or property in the land itself or any particular portion thereof or in any part of the ore, metals, or minerals ungot therein; but he had a right of property only as to such part thereof as upon the liberties granted should be dug and got. That is no more than a mere personal chattel when obtained in pursuance of incorporeal privileges granted for the purpose of obtaining it, being very different from a grant or demise of the mines or metals or minerals within the land, and is such a right only as, under the circumstances stated in the case, is not sufficient to support an ejectment.

The court in Boone *v.* Stover (66 Mo., 430) approved and followed the above opinion, Judge Napton saying:

By a lease the lessee obtains an estate in possession of the land and its products in respect to which he can maintain ejectment; but in a license or grant of an incorporeal hereditament the grantor does not divest himself of the possession, and the liberty of working a mine or mines on it is not inconsistent with the retention of possession by the grantor.

In Brant *v.* McKeever (18 Pa. St., 70) it was held:

That a statute which gave the right to dig and mine for iron, coal, and other minerals did not grant a right to the soil, but a right to mine and dig in it, and to take to his use the products of his digging and mining; that the grant of the right to dig and mine conveys no more than a license to take and appropriate the minerals beneath the soil, but vests no property in them until they are taken and appropriated.

In Ohio Oil Co. *v.* R. R. Co. (4 C. C. Ohio, 215) the court holds that oil and mining leases convey an interest in the nature of an incorporeal hereditament, but that the lessee also has upon the land a right of property so long as he conforms to the terms under which he holds. The court also holds that these leases grant premises, but for specific and definite purposes, to wit, to enter upon the premises, to sink wells for oil or gas, etc., to take that oil and gas, etc., away, and maintain necessary structures.

There are other cases which might be cited, but the foregoing, it is submitted, are sufficient to show how the Hamilton contract would be construed by our American courts.

THE LAND AND MINING TITLES.

The remaining question for consideration is the present status of the company's land and mining titles.

In the several petitions and briefs filed by the company in the Department of State severe criticism is made of the attorney-general and the court because in the sequestration proceeding no considera-

tion was given to these titles. In the state of the record it is questionable whether that criticism is justified. It must be true that the National Executive and the attorney-general knew of the existence of the titles, and it is probable that in the sequestration procedure an attempt was made to get possession of the mine without regard to the titles. But it is a question whether the company properly availed itself of the opportunity presented to assert its titles as a right to the continued possession of the mine aside from the Hamilton contract.

In the company's answer in the sequestration issue, and in the ninth paragraph thereof, the following statement is made:

On the other hand, the company most solemnly shows that the asphalt lake and lands and other appurtenances which it holds in Guanoco, municipality of Union, district of Benitez, of the State of Bermudez, which have been sequestrated, do not belong to it by virtue of the so-called Hamilton contract, which is the subject-matter of this litigation, but by virtue of the titles which were legally issued to it by the Federal Executive power of Venezuela on the 7th and 14th of December, 1888, both filed in the subaltern registration office of the district of Benitez (El Pilar) on December 11, 1890, first protocol of the first quarter of that year, at folios 100, 101, and 102, under 61 and 62; and although it is true that these titles have as a remote motive the contract now discussed, it is no less true they produce the immediate causes which are proper and peculiar to them, these being titles which have never been questioned and can not be questioned in the present suit.

On the trial of the issue the only evidence introduced was that offered by the Government. The entire evidence consisted of the depositions of certain witnesses whose testimony related to the company's alleged failure to canalize rivers; the Official Gazette, which contained the decision in the Warner & Quinlan case, and an auditor's certificate showing the payment of duties, etc. Doctor Bance was interrogated relative to the company importing supplies free of duty, but his testimony amounted to nothing. This was all the evidence. The company offered no evidence. In the decision rendered by the judge of first instance the evidence introduced was recited in detail, and such recital conforms to the enumeration above made. The judge in the course of the decision made the significant statement:

That the defendant *has not produced any proof in his favor during the proceedings, the grounds on which* the tribunal based the decree of sequestration still existing.

In other words, the company by its answer asserted the existence of the titles. This assertion, however, was coupled with the further statement that the titles had never been questioned, and could not be questioned in that suit. And as further evidence that the titles were not pleaded as a bar to the sequestration the defendant did not introduce them in evidence. The mere reference thereto in the answer can not be said to have been sufficient. And the reference made was to the record to be found in a local registration office in the far-away district in which the mine was located. It can not be claimed that the court should have taken judicial notice of such local records. It is a reasonable inference to say that from the terms of the answer and the failure to introduce the titles in evidence they were not relied upon as a bar to the sequestration: their existence or their validity was not made an issue in the case.

This view is confirmed by the subsequent conduct of the company's counsel. Doctor Bance filed with the court an extended written

brief of the points he made in the defense, the conclusion of which was as follows:

Twelfth. And whereas, finally, the company holds the asphalt mine sequestrated under titles *which have not been discussed, and which can not be the subject of discussion in these proceedings*, in which the resolution of the Hamilton contract only is involved; which titles, on the other hand, exist independently of the said contract and which do not collide with it in any manner whatsoever.

When the sequestration proceeding came to the full court on appeal, one of the judges, Dr. J. de J. Paul, as hereinbefore noted, excused himself from hearing the case, because he said he had been one of the counsel for Warner & Quinlan in their suit against the company; that in such suit the question of the sufficiency of the company's land and mining titles was involved, and he understood a like question was involved in this appeal.

Doctor Bance took exception to the declaration of Doctor Paul, because, he said, the issue in the Warner & Quinlan suit only involved the title to the mine called "Felicidad," and there could be no relation between the issues of that case and the one then before the court. Doctor Bance further said:

On the other hand, the mining title issued to the New York and Bermudez Company, which gives it the exclusive ownership over the lake of asphalt, is not a title *which is discussed "or which can be the subject of discussion, in this incident of sequestration,* nor in the principal suit, on which said incident depends."

In the decision of the high federal court which affirmed the decision of the lower court in the sequestration issue the following observation appears:

* * * it is to be observed that the company did not establish the terms of its opposition.

If these titles could not be questioned in that proceeding, as is alleged in the company's answer; if they could not even be the subject of discussion, as stated by the company's counsel, and if they were not offered in evidence, then how could the court be expected to give any consideration thereto? I see no particular reason why these titles might not have been pleaded and asserted as a defense to the sequestration, but I am not sufficiently advised as to the rules of practice under the civil law to pass judgment on the question.

In the "main issue," which involved the right of the Government to have the Hamilton contract adjudged forfeited for nonperformance of some of its obligations, the land and mining titles had no place in the determination of that question. At the same time, they did appear in the evidence on that issue. The minister of fomento was called upon to certify to the court certain documents in his office, and the minister sent in a number, among which were the official records of these titles. In the company's answer in the main issue the same reference to the titles was made as in the answer in the sequestration issue. While these titles were apparently not referred to by the company's counsel in his briefs and arguments, yet the attorney-general, in discussing this issue before the judge of first instance and in his written argument filed therein, discussed these titles at some length. He quoted the ninth paragraph of the defendant's answer, wherein reference is made to the titles, and then said:

This argument has a scope exceeding the limits of the controversy. If the company can produce other titles than those granted it by the Hamilton contract *an opportunity*

will arrive for it to do so; then would be the moment to discuss and estimate their true value. In demanding the resolution of the contract the plaintiff has been obliged by necessity to stand on the contract, which is a law of the Republic and which appears as the principal origin of all the rights and obligations of the contractor.

In the argument under discussion the defendant has desired to establish emphatically that the asphalt lake and lands and the other appurtenances it has in Guanoco do not belong to it by virtue of the Hamilton contract, the subject-matter of this litigation, but by virtue of other distinct titles. This is called, citizen judge, to take medicine when one is healthy (curarse en salud). The company, foreseeing the result of the proceedings, at this time advances the desire to avoid the return of the property to which it alludes, which it would be forced to make through the resolution of its contract by the judgment which may be rendered in this suit; *when that judgment is about to be executed* and the defendant should persist in his rash claim, then will be the time to discuss the illegality of the reasoning on which it is based. For the present it is sufficient for me to remark to the tribunal that the judgment rendered in the litigation instituted by Messrs. Warner & Quinlan against the New York and Bermudez Company before the former federal court, the court declared that "the Hamilton contract having acquired the character of a law of the Republic when it was approved by the National Congress, said contract created for twenty-five years a special condition for the exploitation of asphalt and other natural products in the territory of the former State of Bermudez—that is to say, that such exploitation was to be made solely by the New York and Bermudez Company in a general manner, according to the terms of the contract and for the period prescribed."

And the attorney-general went on to say that the title cited by the company was originally issued to A. H. Carner, and it contained a defect which vitiated it, because it was granted in violation of law; that is to say, in asking for such title it is proven that Carner did not act in the name of the company, because the latter deemed it necessary to subsequently have a conveyance to it from both Carner and his wife as property acquired during the conjugal relation. Therefore no possessory title in the company could be considered except the Hamilton contract.

It is to be observed that the attorney-general, in his argument on this main issue, after the decree of sequestration had been entered, admitted that the proper time for the consideration of these titles was yet to come, and when that time did come their merits would then be considered. In other words, he did not say the titles should have been pleaded and considered in the sequestration issue, or, because they were not so pleaded and proven, that any subsequent discussion of their force and validity was precluded, but he did say the opportunity for their consideration still remained in the future, and that to discuss them in the case then before the court was "to take medicine before one is ill."

We have, therefore, the counsel on both sides of the case practically agreed on the proposition that the titles aforesaid were not involved or necessarily involved in either the main issue or the sequestration issue of the case then before the court.

The query has arisen as to how or by what procedure the future determination of the value of the titles can be raised or how the opportunity for their consideration can be brought about. Without assuming to discuss questions of practice under the Venezuelan Code the statement made by the attorney-general suggests a way in which the question can be raised.

The civil law defines a sequestration to be the deposit with an indifferent or impartial person of the thing involved in a litigation between two or more persons, to be so held until the court determines to whom it belongs, when it shall be restored to such person. (Louisiana Code, *ante.*, p. 94.)

In the case under consideration the principal issue involved was the right of the Government to a forfeiture of the Hamilton contract; the theory of the plaintiff seemed to be that the forfeiture of the contract entitled it to the possession of the mine operated by the company under that contract. The sequestration order was interlocutory in character and incidental to the main issue; the mine was thereby turned over to or deposited with Carner—who is alleged to be an impartial or indifferent person—to be held by him until the court determines to whom it belonged, and then Carner would turn it over to the person adjudged to be entitled thereto. Regularity in proceeding suggests that after the judgment of forfeiture of the contract was rendered, the next step was an order from the court to the sequestrator or receiver that he turn over the property to the Government. To the entry of such an order the company might object, and in support of its objections set up its land and mining titles as evidence of a right of possession independent of the Hamilton contract. An issue could then be formed on the merits of these titles, and the opportunity would be thus afforded to test their validity. This, or something like it, is what I understand the attorney-general to mean when he said, as above quoted, that when the dissolution of the contract was adjudged, and "when that judgment is going to be executed, and if the defendant should still persist in its bold pretension, that will be the proper moment to discuss the illegality of the reasoning on which he bases his opinion," i. e., the validity of the titles. In this case no such order was ever entered or served on Carner, so far as the record shows. Carner, at last accounts, was still acting as sequestrator. In view of what the attorney-general said, the company even now may have the right to come into court and, by petition or in some other appropriate way, set up its titles, ask for an adjudication thereon, and for an order that the sequestrator restore the property to its possession. I suggest this in order to show that the litigation is not necessarily ended, and that, perhaps, the company has not exhausted all of its legal remedies.

The company's titles and the regularity of the procedure under which they were acquired have never been questioned by the Government nor passed upon by the courts. In the bitter controversy in the Warner & Quinlan suit a direct assault was made on these titles, but on the single question of the alleged error in the description of the premises no question was raised or even suggested that they were not otherwise regular and in strict conformity with the law. Aside from the question of description, the titles may be said to stand unimpeached and unassailed. The decision in the "sequestration" suit, as before stated, did not involve these titles and they are not affected thereby.

A question has been raised as to the effect of the decision in the Warner & Quinlan case upon these titles, although they are not discussed, and no adjudication in reference thereto was made in that decision. The court there held that the Hamilton contract, "created for twenty-five years a special situation for the exploitation of the asphalt and other natural products existing in the old State of Bermudez, or in other words, the New York and Bermudez Company alone had the right to make exploitation in a general manner in the terms of the contract and during the time prescribed." It is also therein stated that the Government had no power to grant titles to

not "property leased," or in any sense the thing in controversy. Yet in this case the Government not only seized the asphalt lake, but it seized the company's moneys, account books, household and office furniture, provisions, stores, supplies, machinery, tools, and all its personal property of every name and description, and is not holding the same in custody as contemplated by the code, but is using and consuming them and is actually carrying on business therewith in competition with the company, the owner of the property. This was a seizure which went far beyond the authority of the code; and which, even on the theory of the contract advanced by the Government, was not only unnecessary, but harsh, oppressive, and unjustifiable.

The next question for consideration is the alleged obligation to make improvements, the nature thereof, and wherein the company made default in respect thereto.

THE SECOND ADDITIONAL ARTICLES.

The only ground for sequestration alleged by the Government was that the company had "omitted to make improvements which by the contract it was bound to make, such as the canalization of the rivers of the State." The only obligation to canalize rivers is found in what is called the "second additional articles," entered into by the Government and Hamilton on May 30, 1884.

The original contract was entered into on September 15, 1883. It was approved by Congress on June 5, 1884, five days after the date of the second additional articles. It is fair to assume that the original contract had been reported to Congress and it was before that body prior to the time the second articles were entered into. It is not disputed that the original contract was approved by Congress, that it was published in the Official Gazette, and it became effective as a public law without the second articles being a part thereof or attached thereto.

The company contended on the trial that the second additional articles were never approved by Congress, as the law then required, and therefore they never became effective or binding upon the parties.

The attorney-general in reply introduced in evidence an omnibus report made by the minister of fomento to Congress, dated February 19, 1885, the next year after the original contract was approved. This report was a general résumé of the transactions of the President through the agency of this ministry. In this report reference was made to the original contract and to the additional articles dated May 30, 1884. No specific action was taken by Congress upon these articles. The only sort of an approval was a general legislative decree enacted by Congress, dated April 17, 1886, wherein Congress approved all the acts of President Crespo during the two years from 1884 to 1886. And this approval, the attorney-general contended, was sufficient to validate the second additional articles. I have not given much consideration to this phase of the question, because there are other facts of more controlling importance which in my judgment are decisive as to the rights of the parties.

By these articles Hamilton agreed to open a channel in one or more rivers of the State, beginning with the Cano Colorado and the Guarapiche, as far as Maturin, for purposes of exportation and importation. In consideration whereof the Government granted Hamilton the

"exclusive right of navigating the rivers thus made navigable, and to levy a tax, to be fixed by agreement with the Government, on ships and boats navigating them, as soon as they shall be made navigable." Hamilton was to have the same rights if he built a railroad.

These "additional articles" made no reference whatever to the original contract or to the subject-matter thereof, and they were in no sense germane thereto. The canalization of the river Guarapiche and the opening of navigation to Maturin "for exportation and importation" had nothing whatever to do, so far as the pleadings and the evidence in this record show, with the exploitation of asphalt or other natural products. The obligation expressed in these "additional articles" was independent of and distinct from the obligations of the original contract. The latter was complete in and of itself; it was signed, sealed, and delivered, approved by Congress, and became a public law without these additional articles.

The obligation of the "additional articles" carried with it a compensation peculiar thereto, viz, the exclusive right to navigate the rivers canalized, or to levy a tax on the vessels of others who might navigate them. The high federal court, in one of its opinions in this case, said that the canalizing of the rivers was "a work for which the Government intended to pay by granting him (Hamilton) 'the exclusive right of navigating the rivers he might canalize.'" These articles then created their own obligation, furnished their own compensation, and in every sense expressed a contract entire, severable from the original contract. The mere fact they were called "second additional articles" did not make them a constituent part of the original contract.

Therefore a breach of the covenants in the "second additional articles" can not be assigned as a breach of the original contract. The "improvement" provided for by these additional articles can not be said to relate to the subject-matter of the original contract as defined by the Government's complaint or to be such an improvement as is contemplated by article 373 of the code, which permits sequestration.

Besides, there is another fact disclosed in the evidence that eliminates the consideration of these second additional articles from the case and destroys them as a foundation for sequestration or for a judgment of forfeiture.

The canalization of the rivers was, under these articles, to begin with the Cano Colorado and the Guarapiche—both are parts of the same river—up to Maturin. The evidence shows that about the first work the company did was to commence surveying this river preliminary to its improvement. Before anything substantial was done in that direction Hamilton, as manager for the company, wrote a letter, without date, to the minister of fomento in which he called attention to the exclusive right of navigation granted the company in consideration of the proposed improvement to the river. He asserted that the company had already canalized the river up to the village called Cano Colorado, where it had established wharves, depots, etc., in the execution of the contract.

He called the attention of the minister to the fact that he, Hamilton, had read in the Official Gazette, dated the 28th of the preceding month, an official announcement that the Government had granted one Felipe Pinelli a concession of certain navigation privileges, including the right of navigation from Maturin to certain named

ports. As navigation from Maturin could only be made possible by the canalization of the Guarapiche River, Hamilton considered this last-named concession a violation of the exclusive rights granted him, or the company as his assignee, on said river. He considered this concession to Pinelli a menace to the rights of the company and in conflict with the obligation of the Government. He asked that the attention of the President be called to this situation in order that justice might be done.

On June 14, 1887, the minister replied to the foregoing communication. He said the President found there was no conflict, and could be none, between the Pinelli contract and the contract with the company, because Maturin was a free port and open to general commerce, its traffic could not be granted exclusively to anyone, and the rights of the company only extended to the navigation of interior rivers which it might canalize to the satisfaction of the Government.

The obligation in the second additional articles was to canalize one or more rivers, beginning with the Guarapiche up to Maturin, for which work, as the high federal court said, the Government was to pay Hamilton by giving him the exclusive right of navigation thereon, or the right to levy a toll on other boats or vessels which used the channel, that he, or the company, with great labor and expense, might make. Here was a direct repudiation of the contract by the Government, a notice to him and to the company that if they channeled the river the promised compensation was withdrawn and would not be granted. From that time on the company apparently abandoned any effort to canalize this river, and in so doing it was clearly justified. Apparently both parties thereafter regarded the obligation as nonexistent. That this is true is confirmed by the following facts:

General Crespo was President when the Hamilton contract and the additional articles were executed; also when the Pinelli concession was granted, and when the foregoing notice was written. He was again President on January 4, 1898, when he issued the decree heretofore mentioned, wherein he declared the Hamilton contract canceled.

He made this decree in response to a petition filed with him the previous day by one Doctor Ayala, the attorney and agent of the original promoters of the "Felicidad" claim. In this petition the attorney set forth at length that the company had not canalized the rivers, beginning with the Guarapiche, as it was obligated to do by these additional articles, and therefore, he alleged, it had forfeited the contract.

But President Crespo evidently had in mind his own repudiation of the additional articles. He decreed the contract canceled, but for reasons other than those assigned by Ayala. He ignored the alleged failure to not canalize the rivers, and based his decree entirely on the failure to exploit the forest products.

The obligation to canalize the rivers as expressed in these additional articles was made the basis for the sequestration proceeding. No evidence was introduced and no claim was made on any other ground. It is my judgment that it was a forced construction of the contract to call these additional articles a part of the original contract; it was an illogical and indefensible interpretation of the code to say that *such* canalization was an improvement agreed to be made upon the

subject of the contract, even if the latter was a lease, and that for a failure to so improve the rivers a sequestration of, not only the asphalt mine itself, but all of the company's personal property, could be ordered. And in view of the fact that the Government itself had long years before expressly repudiated the second additional articles, the use of those articles to form a basis for a sequestration, without previous notice or a hearing, and the execution of the order with an armed military force, was an unjustified perversion of the forms of law, an abuse of judicial authority, and an act of notorious injustice.

WAS THE HAMILTON CONTRACT A LEASE?

In order to make the sequestration of the company's property have the semblance of legality, the Hamilton contract was called a lease, and, the right of sequestration being an incident to a lease, it was necessary to call the second additional articles a part of the original contract and the canalization of the rivers an improvement provided for in the lease. If my view of the sequestration proceeding is correct, it is immaterial whether the contract is or is not a lease. But a few observations on that point may not be out of place.

The ordinary definition of a lease is stated as follows: "The legal understanding of a lease for years is a contract for the *possession and profits of land* for a determinate period, with the recompense of rent."[a] The characterization of the original contract as given in the Government's complaint does not meet this definition of a lease. The complaint said the subject-matter of the contract was "*the enjoyment* of all the natural products existing on the wild lands of the former State of Bermudez." The contract did not convey the possession of any determinate property or give an exclusive interest in any land; it only granted the incorporeal right to explore and exploit the natural products in a vague, indefinite, and uncertain territory; it was only a right of enjoyment, a right to take and use such products; these products were, as the complaint stated, the subject of the contract; the use of the lands was only temporary and an incident to the right to take the products therefrom. The Government still retained possession and control of wild lands for all other purposes. The contract was, therefore, a license, irrevocable and coupled with an interest. This view of the contract is confirmed by the following leading cases on the subject:

In the case of Funk *v.* Haldeman (53 Pa. St., 237) a certain contract was under consideration which one of the parties to the suit insisted was a lease. This contract is very similar to the Hamilton contract, and if the principles which the court applied in determining the nature of the contract in this Pennsylvania case are sound, there is no reason to doubt that the Hamilton contract amounted to a license and not a lease.

In the Pennsylvania case the contract read as follows:

In consideration of $200, the receipt whereof from Funk is acknowledged, McElheny and wife grant, bargain, and sell unto the said Funk, his heirs and assigns, the free and uninterrupted use, privilege, and liberty to go on to any part of the 200 acres now owned, occupied, and in possession of the party of the first part, it being in the north part of Cornplanter Township aforesaid, and lying each side of Oil Creek, for the purpose of prospecting, digging, excavating, and boring, and erecting thereon

[a] United States *v.* Gratiot, 14 Peters, 526.

frames, vats, engine, or anything necessary for the prospecting, experimenting, or searching to find any ore, oil, salt, coal, or other minerals, and of taking the same out of the earth; also, we, the said party of the first part, do hereby grant unto the said party of the second part the right, privilege, and exclusive use of 1 acre of land at and around each well or pit, where the indications are such as will justify in operating or experimenting; and also the said party of the second part, his heirs and assigns, are to have free ingress, egress, and regress on and over said land by himself, hands and teams, tenants, and undertenants, occupiers or possessors of the said springs, mines, ore, or coal beds, in common with the said party of the first part, their heirs and assigns.

Then followed the covenants of Funk that he would use no more lands for road or ways than should be absolutely necessary; that he would commence operating the next spring, and if he succeeded in finding or procuring any oil, ore, salt, coal, or other minerals, then in addition to the $200 paid, he agreed to give the one-third part of all that was taken out of the earth, on the premises, in barrels to be furnished by McElheny at the pit's mouth. In construing this contract, the court said:

The interest granted to Funk is an incorporeal hereditament. The first word that occurs in a definition of an incorporeal hereditament is "right"—a right issuing out of a thing corporate, or concerning, or annexed to, or exercisable within the same. It is no part of the corporate thing that remains as perfect after the right has issued or been exercised as before. The incorporeal hereditament, always a feature of contract, is a collateral incident which may belong or not belong to the thing corporate without any visible alteration therein.

When this right takes the form that is designated in the classification of incorporeal hereditaments a "common," it is called a profit which one man hath in the land of another. Not ordinarily an exclusive profit, for in the instance of common of pasture, though an owner of the soil grant another common of pasture, sans nombre, yet the grantee can not use the common with so many cattle that the grantor shall not have sufficient common for his own cattle. (1 Coke Litt., 122.)

Recurring now to the very language of the several grants which I have quoted from the deeds, it will be seen to amount neither to a lease nor a sale of the land, nor of any of the minerals in the land. No estate or property either in the soil or minerals was granted. If the grantor's dominion over these was not as complete after the grants as before, it was because of the covenants which restrained it and not because of any title to either soil or minerals that had vested in Funk.

But here the right granted was to experiment for oil; if found, to sever it from the soil, and to take it, on yielding a third to the landlord, as a chattel—not as any part of the realty. And the only possession to which the grantee was admitted was such as was necessary to the exercise of this right. The exclusive possession even of the acre about the pit's mouth was to terminate with an abandonment of the experiment. And the consideration for this right was not in the $200 paid by Funk (that was only for the entry to experiment), but was to be measured by the oil taken from the ground.

If Funk acquired no estate in lands or minerals, what is his right to be denominated? I answer, a license to work the lands for minerals. Bainbridge, in his work on the Law of Mines and Minerals, page 246, says: "There is a great distinction between a lease of mines and a license to work mines. The former is a distinct conveyance of an actual interest or estate in lands, while the latter is only a mere incorporeal right to be exercised in the lands of others. It is a profit a prendre, and may be held apart from the possession of land. In order to ascertain whether an instrument must be construed as a lease or a license it is only necessary to determine whether the grantee has acquired by it any estate in the land in respect of which he might bring ejectment. If the land is still to be considered in the possession of the grantor, the instrument will only amount to a license, and though the licensee will certainly be entitled to search and dig for mines according to the terms of the grant, and appropriate the produce to his own use on payment of the stipulated rent or proportion, yet he will acquire no property in the minerals till they are severed from the land and have thus become liable to be recovered in an action of trover."

In the coal-mining districts of Pennsylvania leases for terms of years are very common. They are estate in land. The rent is usually measured by the tons taken, but the tenant is bound to a minimum production annually, and the transaction amounts to a sale, at a price per ton, of the coal in the premises, and constitutes an interest in the lessee in the nature of a corporeal hereditament.

But though we hold the papers in this instance to constitute a license and not a lease, it is a license coupled with an interest—not a mere permission conferred, revocable at the pleasure of the licensor—but a grant of an incorporeal hereditament, which is an estate in the grantee and may be assigned to a third party.

The doctrines as announced in the above case have been applied by the courts of other States. I have been unable to find a case where the court had this question to decide and failed to apply the rule as laid down by the Pennsylvania court. The following cases are in line with the foregoing decision.

Speaking of the right to explore and exploit, Chief Justice Abbott, in Doe *v.* Wood (2 Barn. & Ald., 736), said:

Instead of parting with or granting or demising all the ores, metals, and minerals which were then existing within the lands, its words (the deed granting the mining license) import a grant of such parts thereof as should, upon the license to search and get, be found within the described limits, which is nothing more than the grant of a license to search and get (irrevocable, indeed, on account of its carrying an interest), with a grant of such ore as should be found and got, the grantor parting with no estate or interest in the land. If so, the grantee had no estate or property in the land itself or any particular portion thereof or in any part of the ore, metals, or minerals ungot therein; but he had a right of property only as to such part thereof as upon the liberties granted should be dug and got. That is no more than a mere personal chattel when obtained in pursuance of incorporeal privileges granted for the purpose of obtaining it, being very different from a grant or demise of the mines or metals or minerals within the land, and is such a right only as, under the circumstances stated in the case, is not sufficient to support an ejectment.

The court in Boone *v.* Stover (66 Mo., 430) approved and followed the above opinion, Judge Napton saying:

By a lease the lessee obtains an estate in possession of the land and its products in respect to which he can maintain ejectment; but in a license or grant of an incorporeal hereditament the grantor does not divest himself of the possession, and the liberty of working a mine or mines on it is not inconsistent with the retention of possession by the grantor.

In Brant *v.* McKeever (18 Pa. St., 70) it was held:

That a statute which gave the right to dig and mine for iron, coal, and other minerals did not grant a right to the soil, but a right to mine and dig in it, and to take to his use the products of his digging and mining; that the grant of the right to dig and mine conveys no more than a license to take and appropriate the minerals beneath the soil, but vests no property in them until they are taken and appropriated.

In Ohio Oil Co. *v.* R. R. Co. (4 C. C. Ohio, 215) the court holds that oil and mining leases convey an interest in the nature of an incorporeal hereditament, but that the lessee also has upon the land a right of property so long as he conforms to the terms under which he holds. The court also holds that these leases grant premises, but for specific and definite purposes, to wit, to enter upon the premises, to sink wells for oil or gas, etc., to take that oil and gas, etc., away, and maintain necessary structures.

There are other cases which might be cited, but the foregoing, it is submitted, are sufficient to show how the Hamilton contract would be construed by our American courts.

THE LAND AND MINING TITLES.

The remaining question for consideration is the present status of the company's land and mining titles.

In the several petitions and briefs filed by the company in the Department of State severe criticism is made of the attorney-general and the court because in the sequestration proceeding no considera-

tion was given to these titles. In the state of the record it is questionable whether that criticism is justified. It must be true that the National Executive and the attorney-general knew of the existence of the titles, and it is probable that in the sequestration procedure an attempt was made to get possession of the mine without regard to the titles. But it is a question whether the company properly availed itself of the opportunity presented to assert its titles as a right to the continued possession of the mine aside from the Hamilton contract.

In the company's answer in the sequestration issue, and in the ninth paragraph thereof, the following statement is made:

> On the other hand, the company most solemnly shows that the asphalt lake and lands and other appurtenances which it holds in Guanoco, municipality of Union, district of Benitez, of the State of Bermudez, which have been sequestrated, do not belong to it by virtue of the so-called Hamilton contract, which is the subject-matter of this litigation, but by virtue of the titles which were legally issued to it by the Federal Executive power of Venezuela on the 7th and 14th of December, 1888, both filed in the subaltern registration office of the district of Benitez (El Pilar) on December 11, 1890, first protocol of the first quarter of that year, at folios 100, 101, and 102, under 61 and 62; and although it is true that these titles have as a remote motive the contract now discussed, it is no less true they produce the immediate causes which are proper and peculiar to them, these being titles which have never been questioned and can not be questioned in the present suit.

On the trial of the issue the only evidence introduced was that offered by the Government. The entire evidence consisted of the depositions of certain witnesses whose testimony related to the company's alleged failure to canalize rivers; the Official Gazette, which contained the decision in the Warner & Quinlan case, and an auditor's certificate showing the payment of duties, etc. Doctor Bance was interrogated relative to the company importing supplies free of duty, but his testimony amounted to nothing. This was all the evidence. The company offered no evidence. In the decision rendered by the judge of first instance the evidence introduced was recited in detail, and such recital conforms to the enumeration above made. The judge in the course of the decision made the significant statement:

> That the defendant *has not produced any proof in his favor during the proceedings, the grounds on which* the tribunal based the decree of sequestration still existing.

In other words, the company by its answer asserted the existence of the titles. This assertion, however, was coupled with the further statement that the titles had never been questioned, and could not be questioned in that suit. And as further evidence that the titles were not pleaded as a bar to the sequestration the defendant did not introduce them in evidence. The mere reference thereto in the answer can not be said to have been sufficient. And the reference made was to the record to be found in a local registration office in the far-away district in which the mine was located. It can not be claimed that the court should have taken judicial notice of such local records. It is a reasonable inference to say that from the terms of the answer and the failure to introduce the titles in evidence they were not relied upon as a bar to the sequestration; their existence or their validity was not made an issue in the case.

This view is confirmed by the subsequent conduct of the company's counsel. Doctor Bance filed with the court an extended written

brief of the points he made in the defense, the conclusion of which was as follows:

Twelfth. And whereas, finally, the company holds the asphalt mine sequestrated under titles *which have not been discussed, and which can not be the subject of discussion in these proceedings*, in which the resolution of the Hamilton contract only is involved; which titles, on the other hand, exist independently of the said contract and which do not collide with it in any manner whatsoever.

When the sequestration proceeding came to the full court on appeal, one of the judges, Dr. J. de J. Paul, as hereinbefore noted, excused himself from hearing the case, because he said he had been one of the counsel for Warner & Quinlan in their suit against the company; that in such suit the question of the sufficiency of the company's land and mining titles was involved, and he understood a like question was involved in this appeal.

Doctor Bance took exception to the declaration of Doctor Paul, because, he said, the issue in the Warner & Quinlan suit only involved the title to the mine called "Felicidad," and there could be no relation between the issues of that case and the one then before the court. Doctor Bance further said:

On the other hand, the mining title issued to the New York and Bermudez Company, which gives it the exclusive ownership over the lake of asphalt, is not a title *which is discussed "or which can be the subject of discussion, in this incident of sequestration,* nor in the principal suit, on which said incident depends."

In the decision of the high federal court which affirmed the decision of the lower court in the sequestration issue the following observation appears:

* * * it is to be observed that the company did not establish the terms of its opposition.

If these titles could not be questioned in that proceeding, as is alleged in the company's answer; if they could not even be the subject of discussion, as stated by the company's counsel, and if they were not offered in evidence, then how could the court be expected to give any consideration thereto? I see no particular reason why these titles might not have been pleaded and asserted as a defense to the sequestration, but I am not sufficiently advised as to the rules of practice under the civil law to pass judgment on the question.

In the "main issue," which involved the right of the Government to have the Hamilton contract adjudged forfeited for nonperformance of some of its obligations, the land and mining titles had no place in the determination of that question. At the same time, they did appear in the evidence on that issue. The minister of fomento was called upon to certify to the court certain documents in his office, and the minister sent in a number, among which were the official records of these titles. In the company's answer in the main issue the same reference to the titles was made as in the answer in the sequestration issue. While these titles were apparently not referred to by the company's counsel in his briefs and arguments, yet the attorney-general, in discussing this issue before the judge of first instance and in his written argument filed therein, discussed these titles at some length. He quoted the ninth paragraph of the defendant's answer, wherein reference is made to the titles, and then said:

This argument has a scope exceeding the limits of the controversy. If the company can produce other titles than those granted it by the Hamilton contract *an opportunity*

will arrive for it to do so; then would be the moment to discuss and estimate their true value. In demanding the resolution of the contract the plaintiff has been obliged by necessity to stand on the contract, which is a law of the Republic and which appears as the principal origin of all the rights and obligations of the contractor.

In the argument under discussion the defendant has desired to establish emphatically that the asphalt lake and lands and the other appurtenances it has in Guanoco do not belong to it by virtue of the Hamilton contract, the subject-matter of this litigation, but by virtue of other distinct titles. This is called, citizen judge, to take medicine when one is healthy (curarse en salud). The company, foreseeing the result of the proceedings, at this time advances the desire to avoid the return of the property to which it alludes, which it would be forced to make through the resolution of its contract by the judgment which may be rendered in this suit; *when that judgment is about to be executed* and the defendant should persist in his rash claim, then will be the time to discuss the illegality of the reasoning on which it is based. For the present it is sufficient for me to remark to the tribunal that the judgment rendered in the litigation instituted by Messrs. Warner & Quinlan against the New York and Bermudez Company before the former federal court, the court declared that "the Hamilton contract having acquired the character of a law of the Republic when it was approved by the National Congress, said contract created for twenty-five years a special condition for the exploitation of asphalt and other natural products in the territory of the former State of Bermudez—that is to say, that such exploitation was to be made solely by the New York and Bermudez Company in a general manner, according to the terms of the contract and for the period prescribed."

And the attorney-general went on to say that the title cited by the company was originally issued to A. H. Carner, and it contained a defect which vitiated it, because it was granted in violation of law; that is to say, in asking for such title it is proven that Carner did not act in the name of the company, because the latter deemed it necessary to subsequently have a conveyance to it from both Carner and his wife as property acquired during the conjugal relation. Therefore no possessory title in the company could be considered except the Hamilton contract.

It is to be observed that the attorney-general, in his argument on this main issue, after the decree of sequestration had been entered, admitted that the proper time for the consideration of these titles was yet to come, and when that time did come their merits would then be considered. In other words, he did not say the titles should have been pleaded and considered in the sequestration issue, or, because they were not so pleaded and proven, that any subsequent discussion of their force and validity was precluded, but he did say the opportunity for their consideration still remained in the future, and that to discuss them in the case then before the court was "to take medicine before one is ill."

We have, therefore, the counsel on both sides of the case practically agreed on the proposition that the titles aforesaid were not involved or necessarily involved in either the main issue or the sequestration issue of the case then before the court.

The query has arisen as to how or by what procedure the future determination of the value of the titles can be raised or how the opportunity for their consideration can be brought about. Without assuming to discuss questions of practice under the Venezuelan Code the statement made by the attorney-general suggests a way in which the question can be raised.

The civil law defines a sequestration to be the deposit with an indifferent or impartial person of the thing involved in a litigation between two or more persons, to be so held until the court determines to whom it belongs, when it shall be restored to such person. (Louisiana Code, ante., p. 94.)

In the case under consideration the principal issue involved was the right of the Government to a forfeiture of the Hamilton contract; the theory of the plaintiff seemed to be that the forfeiture of the contract entitled it to the possession of the mine operated by the company under that contract. The sequestration order was interlocutory in character and incidental to the main issue; the mine was thereby turned over to or deposited with Carner—who is alleged to be an impartial or indifferent person—to be held by him until the court determines to whom it belonged, and then Carner would turn it over to the person adjudged to be entitled thereto. Regularity in proceeding suggests that after the judgment of forfeiture of the contract was rendered, the next step was an order from the court to the sequestrator or receiver that he turn over the property to the Government. To the entry of such an order the company might object, and in support of its objections set up its land and mining titles as evidence of a right of possession independent of the Hamilton contract. An issue could then be formed on the merits of these titles, and the opportunity would be thus afforded to test their validity. This, or something like it, is what I understand the attorney-general to mean when he said, as above quoted, that when the dissolution of the contract was adjudged, and "when that judgment is going to be executed, and if the defendant should still persist in its bold pretension, that will be the proper moment to discuss the illegality of the reasoning on which he bases his opinion," i. e., the validity of the titles. In this case no such order was ever entered or served on Carner, so far as the record shows. Carner, at last accounts, was still acting as sequestrator. In view of what the attorney-general said, the company even now may have the right to come into court and, by petition or in some other appropriate way, set up its titles, ask for an adjudication thereon, and for an order that the sequestrator restore the property to its possession. I suggest this in order to show that the litigation is not necessarily ended, and that, perhaps, the company has not exhausted all of its legal remedies.

The company's titles and the regularity of the procedure under which they were acquired have never been questioned by the Government nor passed upon by the courts. In the bitter controversy in the Warner & Quinlan suit a direct assault was made on these titles, but on the single question of the alleged error in the description of the premises no question was raised or even suggested that they were not otherwise regular and in strict conformity with the law. Aside from the question of description, the titles may be said to stand unimpeached and unassailed. The decision in the "sequestration" suit, as before stated, did not involve these titles and they are not affected thereby.

A question has been raised as to the effect of the decision in the Warner & Quinlan case upon these titles, although they are not discussed, and no adjudication in reference thereto was made in that decision. The court there held that the Hamilton contract, "created for twenty-five years a special situation for the exploitation of the asphalt and other natural products existing in the old State of Bermudez, or in other words, the New York and Bermudez Company alone had the right to make exploitation in a general manner in the terms of the contract and during the time prescribed." It is also therein stated that the Government had no power to grant titles to

mines in the State aforesaid "to any person or corporation in contravention of the terms of the contract."

The attorney-general suggests that the effect of this decision is, that during the existence of the Hamilton contract, and because of the "special situation" thus created, the operation of the ordinary mining laws was suspended, and no title under the same could be acquired by anyone, not even by the Bermudez Company, during the existence of the contract, and therefore the latter's mining title is either void or voidable. I do not believe such an interpretation of the decision is justified.

It is true that in the eighth paragraph of the court's conclusion, in referring to the question whether the "Felicidad" mine was or was not located within the boundaries of the Bermudez Company's mine, the court said that question—

> * * * has no essential importance, since whatever be the situation *what has just been* said remains intact, namely, that in the territory of the old State of Bermudez, *no mining concessions of asphalt* can be given while the right remains in force for the general exploitation of asphalt which, in that territory, belongs to the New York and Bermudez Company under the Hamilton contract.

But a reference to "what has just been said" by the court in this decision will show the following statements:

> It is therefore understood that the New York and Bermudez Company has had perfect right to say * * * that in accordance with the terms of the Hamilton contract, of which it is the cessionary, the National Government had no power to grant title to mines * * * to any other person or corporation in *contravention* to the terms of the contract.

In the third paragraph of the conclusions the court said the Government could not give title to the mine "Felicidad,"

> * * * nor grant, in the old State of Bermudez, mining concessions of asphalt to any other person or corporation, *in contravention of the terms of the contract.*

Interpreting the decision as a whole, the court said in effect that under the Hamilton contract the Bermudez Company, during the term thereof, had an exclusive and paramount right to mine or exploit asphalt in the territory specified; and during such term the Government had no power to grant a "like concession" or to grant title to a mine in contravention of such exclusive right; that is, no conflicting right of exploitation could be granted. The decision was made in a case wherein the claimants to "Felicidad" asserted a right not only of title but of exploitation, and further asserted that such right was superior to the Hamilton contract. The validity of this claim the court denied.

Conceding to the Hamilton contract the full force and effect given thereto by the court in the Warner & Quinlan case, the right conferred on Hamilton was only that of exploitation for a limited term. There is nothing in the decision that says a person or a corporation could not acquire a title to an asphalt mine under the mining laws and hold it subject to the superior and exclusive right of exploitation vested in the Bermudez Company by the Hamilton contract. In such case the exercise of the right of exploitation would be postponed until the determination of the contract. And as long as the title was so held and the superior right of exploitation in the company was recognized, the title could not be said to be in "contravention" of the contract. The evidence in the Government's suit showed that subsequent to the Hamilton contract the Government

granted titles to asphalt mines to divers parties in that same territory, but not located on the asphalt lake. It did not appear that the Bermudez Company ever made any objection thereto or that the owners thereof ever asserted or exercised any right of exploitation. It may be that the contract was considered a bar against operation; but now that the bar is removed by a judgment of forfeiture, there is nothing in the decision which prevents the owners of these titles from exercising the full enjoyment of their titles. No such question was raised or decided in the Warner & Quinlan case. Warner & Quinlan denied the legality of the Hamilton contract and asserted a right to mine or exploit in contravention thereof. On this issue the court decided against them. It is also to be noted that the court decided that the Felicidad title was invalid because of errors in the procedure under which it was acquired.

In the Bermudez Company's brief filed in the Department of State entitled, "Statement of wrongs done to the company," page 22, the argument is apparently made that the decision in the Warner & Quinlan case is to the effect that "during the continuance of the contract, the National Government could not grant the title in question (Felicidad), nor grant any mining title for asphalt 'to any other person or corporation' than Hamilton, the original concessionaire, or the New York and Bermudez Company, his assignee.'" In my judgment, no such construction of the decision is justified. To say that Hamilton or the Bermudez Company could, to the exclusion of everyone else, and under the cover of the contract, acquire a mining title, and thereby extend its exclusive right of exploitation, is to give both the contract and the decision of the court a wider scope and a greater force than is justified. It is manifestly unjust to say that the "special situation" created by the contract included any exclusive privilege beyond the right of exploitation.

The company's mining title may be sustained upon a theory in harmony with the decision in the Warner & Quinlan case, to wit, that it was not acquired in contravention of the Hamilton contract, and did not come within the inhibition pronounced by that decision. The right of exploitation for a limited term was already vested in the company by the contract; the company then acquired a title under the mining laws for an additional term of ninety-nine years from the date of the Government's deed. The prior right of exploitation and the estate thus granted by the mining deed, or the particular or prior estate, if it may be so called, and the subservient estate were thus united in the one corporation, and its title thereby became complete for the term specified in the mining deed.

The right to acquire the title under the mining law was not an exclusive right vested in the company by the Hamilton contract. It did not grow out of and was in no sense dependent upon or connected with that contract. It was a right open to everyone under the land and mining laws of the country, the only limitation being on the right of operation during the continuance or the term of the contract. In this instance both the right to operate and the title to a specific property were united in the Bermudez Company. The right to the property then became complete.

Without extending the discussion further, the fact remains that the company's right under these titles has never been passed upon. The Government of Venezuela has seized and still holds the property

as an incident to the forfeiture of the Hamilton contract. In so doing the Government ignored titles which it had previously granted, and the validity of those titles remains to be adjudicated.

CONCLUSIONS.

In review of the entire record, I beg to submit the following conclusions:

1. The Government on the "main issue" as made and on the evidence introduced in what is called the "sequestration" suit was entitled to a judgment of forfeiture or cancellation of the Hamilton contract, because the Bermudez Company had not performed the obligation by it assumed, to explore and exploit the natural products of the forests and uncultivated lands in the State of Bermudez, and because the company did not plead or prove any release from such obligation or any excuse or justification for such nonperformance.

2. The sequestration of the company's property as an incident to the adjudication of the cancellation of the Hamilton contract was not justified, for the following reasons, viz:

(*a*) The contract was not a lease of a determinate property as specified in the second paragraph of article 368 of the Civil Code of Procedure, which was relied upon by the Government as the authority for such sequestration.

(*b*) The Government did not claim, and the evidence did not show, that the canalization of the Guarapiche River, or any other river, had any connection with the subject-matter of the Hamilton contract beyond the fact that such canalization was provided for in the so-called "second additional articles." The attorney-general stated that the subject-matter of the contract was "the enjoyment of the natural products existing on the wild lands," etc.; therefore it was a license to explore and exploit such products—an incorporeal hereditament, a mere right for a given term—and the canalization of the river aforesaid was not an adjunct thereto or connected therewith, or an improvement on the property leased, within the meaning of the seventh paragraph of article 373 of the Civil Code of Procedure, which was also relied upon as authority for the sequestration.

(*c*) The personal property of the company, its tools, provisions, merchandise, moneys, furniture, and equipment not connected with the mine so as to be properly characterized as fixtures or as a part of the realty, and which was in no sense leased property, was not a proper subject of sequestration under either of the above-mentioned articles of the code, and the appropriation by the Government of such personal property to its own use was depriving the company of its property without due process of law.

(*d*) The "second additional articles," which provided for the canalization of the Guarapiche River, was a contract entered into by the parties subsequent to the execution of the first Hamilton contract. The subject-matter of this last contract was not in any manner connected or identified with the original contract; no reference to the original contract was made therein; the obligations assumed therein by Hamilton did not enter into and were not made a part of the consideration for the original contract. It created its own obligation and provided its own compensation. Therefore a breach of the covenants in this later and independent contract could not be assigned

as a breach of the original contract or made the basis for a sequestration of the company's property in a suit to cancel such original contract. This failure to canalize rivers as specified in this last contract was the only evidence offered in support of the alleged right of sequestration; the probative force of that evidence was very slight; and the granting of the writ without notice to the company and its execution by a civil officer supported by the army and navy has, at least, the appearance of oppression and a perversion of justice.

(*e*) As early as June 14, 1887, the Government notified Hamilton, then manager of the Bermudez Company, that the consideration for the obligation to canalize the Guarapiche River, viz, the exclusive right of navigation, would not be allowed. This amounted to a repudiation of the second additional article and relieved the company from any further obligation thereunder.

3. The assessment of damages against the Bermudez Company for the breach of the Hamilton contract was made without the company having a hearing and without any sufficient evidence of the existence of the facts upon which the assessment is based.

4. The land title of the Bermudez Company gives it the fee to the lands described for which it actually paid a money consideration to the Government. The mining title was acquired under the mining laws of the country and vested in the company the exclusive possession and right of operation for a term of ninety-nine years. These titles, as before stated, were ignored in the sequestration proceeding, and the continued possession of the property by the Government is in contravention thereof.

5. Many charges and countercharges of combination and conspiracy, fraud, and corruption have been made by both sides to the controversy. It would be an endless, and, I believe, a fruitless task to investigate and analyze these conflicting charges and to sift the truth therefrom. In my investigation I disregarded them and confined myself to a study of the records. The result of that study is given in the foregoing pages, without preference for or prejudice against either side.

Respectfully submitted.

WILLIAM J. CALHOUN,
Special Commissioner.

SUPPLEMENTAL REPORT OF HON. WILLIAM J. CALHOUN, SPECIAL COMMISSIONER.

William J. Calhoun to the Secretary of State.

(Filed under date of November 22, 1906.)

DEAR SIR: By way of supplement to my report on the case of the New York and Bermudez Company, I beg to say:

The United States and Venezuela Company, a corporation organized under the laws of the State of New Jersey, also has a controversey with the Government of Venezuela involving certain asphalt interests other than those of the New York and Bermudez Company.

I made no examination of the record in this case. It was my understanding when I went to Venezuela that the complaint of this company had not been the subject of any diplomatic correspondence between this Government and that of Venezuela. And when in Caracas I was unofficially informed that there was no prejudice on the part of the Government of Venezuela against this company, and there was no objection on the part of that Government to making the company's claims the subject of diplomatic negotiation with a view of arriving at a fair adjustment.

The record is comparatively short. All the facts are evidenced by documents recited in the company's several petitions on file.

On June 18, 1900, a definite title was granted under the mining laws of the country to one Dr. Pedro Guzman for an asphalt mine located about 70 miles west of Maracaibo.

One George W. Critchfield, of New York City, formerly a resident of Chicago, Ill., was the representative of the company who investigated this mine and entered into negotiations for its purchase.

The asphalt bed consists of about 300 hectares, or about 90 acres, and is located some distance in the interior, in what was then a wild and trackless wilderness, inhabited only by wild Indians. To reach the mine it was necessary to build a railroad from the river Limon to the mine, a distance of about 27 miles. This river, however, was not navigable except for canoes, because of the many obstructions therein. It empties into the Laguna de Sinimacai, the latter connected with Lake Maracaibo, and from thence there is an open waterway to the Caribbean Sea. In order to ship the asphalt, it was not only necessary to build the railroad, but to clear the channel of the rivers and make them navigable for vessels of considerable tonnage, a work which necessarily involved the expenditure of large sums of money.

Mr. Critchfield, after investigating the situation and being satisfied with the value of the asphalt deposit, made a conditional contract of purchase with the owner, dependent on Critchfield's being able to secure from the Government a satisfactory concession for building and operating the railroad, etc.

General Castro was then what is called the provisional president of the Republic of Venezuela—that is to say, he was administering the affairs of the country as the leader of a successful revolution, wherein the constitutionally elected authorities had been overthrown and a military dictatorship substituted therefor until a President was elected in accordance with constitution.

Mr. Critchfield entered into negotiations with General Castro for a concession which would authorize the construction of the railroad. It resulted in a contract, bearing date April 20, 1901, entered into with the United States of Venezuela as one party and George W. Critchfield as the other. Critchfield was thereby authorized to build the railroad, to establish telephone lines, to establish a line of steamers or vessels, to navigate the rivers connecting the terminus of the railroad on the bank of the River Limon with the sea, to establish and maintain depots and warehouses, to canalize, deepen, or widen the waterways, and to enter free of duty all material for the construction and operation of the railroad, for working the mine, refining, and transporting its products.

Critchfield was required to make a deposit of 50,000 bolivars, or their equivalent in Venezuelan bonds, as a guaranty for the completion of the railroad, etc. At the end of fifty years the railroad, its rolling stock, and appurtenances are to be turned over to the Government.

And one special condition was inserted in the contract, which Mr. Critchfield says he made a condition precedent to the acceptance of the same, and that was to the effect that neither "the enterprise nor the products of its mines" were to be burdened with any kind of taxes except such as were prescribed by the then existing laws. Critchfield says he had in mind a protection against a possibility which has subsequently become an actuality, viz, excessive taxation whenever the enterprise entered upon a successful operation, and without this clause in the contract he never would have accepted the concession.

Critchfield was obligated to commence work within six months from the date of the contract and to finish the same within one year thereafter. He assigned the contract to the United States and Venezuela Company, and the latter then completed the purchase of the asphalt mine, at a cost of $25,000, and promptly entered upon the work required by the contract.

The company improved the River Limon by blowing up rocks, removing trees, digging a canal at its mouth more than half a mile long, deepening and widening its waterways, and making it navigable for some 30 miles. The company also constructed the railroad, and at its terminus on the bank of the River Limon it built a refining plant, warehouses, sawmill, residences, and office buildings, erected houses for workmen and other buildings, and there established a village of several hundred inhabitants, who, for the most part, were in its employ. As a result of the enterprise it is said that what was once a trackless wilderness was opened up to settlement:

clearings were made, farms were located, schools were established, and churches built. At the mine another village and settlement was made, and farms were opened up in that neighborhood. In making these improvements the company is said to have expended more than $600,000 in cash.

The company commenced the operation of its mine, its railroad, and its refinery; it apparently conformed to its contract in every particular, paid its taxes regularly, and obeyed the laws of the country as became a good citizen. The taxes, however, were not much more than nominal. Under the Code of Mines existing in 1901 a tax of half a bolivar (10 cents) was levied on every hectare in all mining concessions; gold, silver, and platinum mines paid an additional tax on the crude product, but mines of copper, coal, asphalt, etc., were only required to pay the tax per hectare above specified, which amounted to only an annual tax on this mine of $30. In addition, the company paid the usual stamp taxes on all contracts, receipts, and other written documents as required by general law.

On January 23, 1904, a new Code of Mines was enacted by Congress. By this law the tax levied on asphalt mines was raised from half a bolivar per hectare to 2 bolivars (40 cents), and in addition thereto, if the mine is in operation, a further tax of 3 per cent on the gross product of the mine is levied.

On June 21, 1904, the President promulgated an Executive decree regulating the acquisition and operation of mines, and supplemental in character to the code of January 23, 1904. By this decree a still further tax of 80 cents per ton was imposed upon all asphalt exported.

As a result of this change in the rate of taxation the authorities demanded of the company the following taxes: On the mine, 300 hectares at the rate of 40 cents per hectare, $120 per annum. On the asphalt, valued at the rate of $20 per ton, which is said to be a gross overvaluation, a tax of 3 bolivars per ton, or 60 cents, was assessed. In addition thereto, under the Executive decree last named, a further tax of 80 cents on every ton of asphalt exported was imposed, making a total direct tax of $1.40 per ton on all the product of the company, all of which was exported to the United States.

The contract also provided that certain material necessary for use in the operation of the mine and in the shipment of its product should be imported free of duty, but after the enforcement of the aforesaid offensive tax laws the Government also levied import duties on shipments of bags and machinery for use in shipping asphalt and in repairing plant and railroad.

The company contends that this increased taxation and the levy of import duties, etc., are not only in violation of the express terms of the contract, but are so burdensome on the industry as to have prohibitory effect. As the result thereof, the entire operation, including mine and railroad, has been long since abandoned, and the railroad, refinery, buildings, and the entire plant are not only idle, but are going to ruin and threaten to become an entire loss.

The only suggestion of an excuse for this violation of the contract of which I have heard is in the alleged fact that the National Congress refused to ratify or confirm the contract, and therefore it never became effective as a legal obligation. In reply, the company calls attention to the fact that although General Castro was not the con-

stitutional President when the contract was entered into, yet at the next succeeding session of Congress a report was made thereto by the ministers of the different departments of the various political and administrative acts of the provisional president, which included this contract, and Congress adopted a general resolution approving all the acts of the "Citizen General Cipriano Castro during the period in which he has exercised the provisional presidency of the Republic," and this, it is claimed, amounts to such an approval of the contract in question as meets the requirements of the constitution.

On the other hand, it is asserted that such a general resolution was not effective for the purpose indicated; that the constitution requires that all legislative enactments be made by separate bills, and before the same become a law they must be read and voted on three several times in each branch of Congress, etc. It is also stated that in April, 1902, a bill was introduced into the lower House approving the contract, and was regularly read and passed, but for some reason it failed to pass the Senate; that subsequently, in July, 1905, the Senate voted on the proposition and rejected it. This legislative action, in each instance, the company claims, was had without its knowledge, suggestion, or initiation; that it was taken long after the contract was entered into, especially the last vote in the Senate; and after the company had, in good faith and in full reliance upon the honor and fidelity of President Castro, gone ahead and made its large expenditure of money and inaugurated a business enterprise which has contributed so largely to the development of the country and the prosperity of the hundreds of people whom it employed.

There are involved in this controversy some serious questions of constitutional law. It is a thankless task to attempt to analyze or decide such questions in a country where there is no continuous and orderly administration of public affairs, where constitutions are so frequently changed or amended and so often suspended or abrogated. It is not my purpose to discuss or pass upon these questions. The facts are stated in the company's petition, and the legal points are ably discussed in its brief, filed in the Department.

There is, however, one phase of the case to which I beg to call your attention. In Venezuela I heard this company spoken of in the highest terms. There is no scandal and no charge of bad faith attached to its record. It is an instance where a concession was accepted in good faith and its obligations fully performed. The contract required that the work contemplated should be commenced within six months and completed within a year. The undertaking was one of such magnitude that no time could be lost; the work was promptly entered upon and completed. The company relied upon the fact that the power of the national executive extended over and dominated every department of government, including both legislative and judicial, and it confidently expected the protection of such executive in the maintenance of its contract rights.

The story told of the construction of this railroad is a thrilling one. It was built through forests, swamps, and almost impenetrable jungles. Critchfield and his assistant, David Flemming, spent months in these swamps and jungles, fighting against malarial fevers, snakes, wild Indians, and overcoming almost insuperable difficulties of one kind and another. It is a story of American courage, indomitable will, and triumphant success.

I was also informed upon the most reliable authority that the enterprise proved to be a great help to the section of country in which it is located. The company employed hundreds of poor people, paid them good wages, established schools, and otherwise contributed to the development and progress of the country. The management kept clear of politics; and although revolutionary forces oftentimes invaded the property, the management refused to pay tribute, furnish supplies, or to otherwise contribute thereto. It is apparently one instance, at least, where an American concessionaire performed the obligations of his contract in good faith; and in the consideration of the case the Department may, I believe, rely upon that fact.

Respectfully submitted.

WILLIAM J. CALHOUN.

DIPLOMATIC CORRESPONDENCE

DIPLOMATIC CORRESPONDENCE.

The Acting Secretary of State to Chargé Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 26, 1900.

It is represented that the rights of the New York and Bermudez Company are likely to be prejudiced by action of Venezuelan Government. If rights of other citizens of the United States will not be prejudiced thereby, you may use good offices with Venezuelan Government for the protection of rights of that company. Department does not desire, however, to interfere in any controversy between citizens of the United States.

HILL, *Acting.*

Mr. Russell to Secretary of State.

[Telegram.]

CARACAS, *September 28, 1900.*
(Received 9.25 a. m.)

A short time ago New York parties purchased mines which New York Bermudez claims comprised in its concession. Bermudez petitioned Government to annul titles.

Venezuelan Government sent engineer locate both titles on the ground. The result was favorable Bermudez. The others protested, alleging due notice not given, and only Bermudez represented survey. Government have sent another commission.

RUSSELL.

Mr. Russell to Mr. Hay.

No. 505.] LEGATION OF THE UNITED STATES,
Caracas, September 28, 1900.

SIR: I have received your cable in regard to the New York and Bermudez Company, which is acknowledged in another dispatch.

There is at present a very bitter controversy going on between Mr. A. H. Carner, representative of the New York and Bermudez Company, and Mr. Sullivan, the representative of some New Yorkers, who a short time ago purchased an asphalt mine in the State of Bermudez called "La Felicidad." Mr. Carner petitioned the Venezuelan Government to annul the title to La Felicidad, claiming that said

mine was comprised within the New York and Bermudez Company's property. Mr. Sullivan claims that, according to plans and documents on file in the ministry of fomento, Felicidad is outside of Mr. Carner's property. Both sides having appealed to the Government, the minister of fomento, "in order to get at the true situation,' sent an engineer to the spot to locate both properties on the ground. The report of the engineer was favorable to the Bermudez Company. Mr. Sullivan protested alleging that, as the resolution stated that the engineer was to avail himself of all possible data from both parties, he did not have due notice, and that only the Bermudez Company's representative was on the ground when the survey was made. Another commission has been sent in accordance with a second decree, and this commission is composed of three engineers, one each named by the contending parties and a third named by the Government, and the report of this commission, I suppose, will be final as to the location of Felicidad.

The New York and Bermudez Company is operating at present in Venezuela under what is called the "Hamilton concession of 1884," purchased by it, and the Carner concession for lands and mines in 1887 and 1888.

The Hamilton concession was a general concession, granted for exploiting the natural products of the State of Bermudez, and one clause gives the right to exploit asphalt and forbids the Government from granting a like concession to anyone else during the period for which the privilege was given, twenty-five years.

In 1887 and 1888 Mr. Carner, as representative of the Bermudez Company, obtained a definite title by purchase to the tract of asphalt property which is at present being worked, and it is this title which it is alleged is being infringed upon by the owners of La Felicidad, a mine for which, in 1897, the Government granted to some Venezuelans a definite title in spite of the protests of the New York and Bermudez Company. This is the title purchased some months ago from the Venezuelans by the New York parties represented by Mr. Sullivan. The title granted in 1897 has never been annulled and has remained in the Venezuelan grantees until acquired by Mr. Sullivan's syndicate last June.

Nothing has ever been done by the Government in response to the various protests of Mr. Carner that the Felicidad title was a violation of his rights under the Hamilton concession, but on the 17th of last July Mr. Carner petitioned the Government to annul the Felicidad title, not on the ground that the existence of said title was a violation of the Bermudez Company's rights under the concession of 1884, but that it was comprised within the asphalt property purchased by him in 1888 and for which a definite title had been granted. The result of this petition was that on the 23d of last July the Government decreed to send the engineer I have before mentioned to locate both properties on the ground. The report of this engineer was objected to by the Sullivan side for the alleged reasons as before stated, and the second commission is now on the ground trying to locate both purchases.

In 1898 the ministry of fomento annulled the Hamilton concession of 1884 for alleged nonfulfillment of contract. This case was taken to the supreme court, which decided that the Government by a mere

resolution of its ministry could not annul such a concession and it was restored to the New York and Bermudez Company.

It would seem that if there has been any violation of the rights of the New York and Bermudez Company it was in 1897 when a definite title was granted to La Felicidad; that title has been allowed to stand ever since, and only a few months ago, with due notice to the Government, it was acquired by the Sullivan syndicate.

In this present controversy I have declined to interfere for either side, and I take it, from your cable on the subject that I am to preserve this attitude. I, however, await your further instructions.

I have the honor, etc.,

WILLIAM W. RUSSELL.

[Inclosure.]

NEW YORK AND BERMUDEZ COMPANY.

[Translations.]

Demand to the Government of Venezuela for protection March 31, 1900.

Memo for the president and ministers April 3, 1900.

Petition upholding the rights of the company against certain intrusions, April 26, 1900.

New protest relating to the same matter, May 11, 1900.

[Inclosure.]

[New York and Bermudez Company, 11 Broadway, New York.]

PORT OF SPAIN,
Trinidad, B. W. I, March 31, 1900.

Citizen Minister of Fomento:

The undersigned, in his capacity as director of the New York and Bermudez Company, residing in Port of Spain (British island of Trinidad), with due respect says as follows:

After over fifteen years of quiet enjoyment of the rights acquired by the company which I represent, by transfer in accordance with the authorization of the Government of Venezuela, made by Mr. Horatio R. Hamilton, of the contract entered into with the National Executive of the Republic under date of September 15, 1883, and approved of by the National Congress on the 6th of June, 1884, and notwithstanding the large amount of capital brought into Venezuela and the large amount of duties that the company has paid to the Government, as shown by the statistics of the proper departments, by the various reports made upon the subject and, lastly, also by judicial proofs produced in court, there has been an attempt to curtail the rights of the said company by invading the territory in which it has been carrying on its industry with special benefit to the country on account of the heavy capital invested. On behalf of the company which I represent, I have appealed to the Government for the protection necessary to insure its rights and have also gone to a trial before the high federal court, when the National Executive, taken by surprise, had issued a resolution under date of 4th of January, 1898, annulling the contract of which the New York and Bermudez Company is assignee, and the rights of the company were made clear by that high court, in the luminous sentence rendered on the 23d of August, 1898, by the chamber of last and only instance of the high federal court, in which sentence the resolution issued by the National Executiye was declared null and void, in a way that admits of no controversy, on account of the legal doctrines on which it is based; and, consequently, the company was left in quiet possession of its rights, as a result of the judicial controversy, so that it was clearly established that the legal force of the contract owned by the New York and Bermudez Company admits of no discussion and until then had never been disputed, the company having carried out all its obligations and maintained its concessions in a permanent state of industrial activity, as the National Government knows through reports, official resolutions, and statistics. It was also shown that the interests of the company were threatened by other parties

interested that, not considering the validity of the titles of the company, nor the prejudice occasioned to Venezuela and to other capital brought into the country for this kind of enterprise and which is kept in fear on account of the troubles it is exposed to, obliged the company to fight for its rights before the courts of the Republic and to suspend its work for some months, with great loss to its interests, a loss that was not then taken into consideration, the rights of the company having been amply insured by the sentence of the high court of the Republic.

To-day, Citizen Minister, I take the liberty of again calling your attention to denounce the fact that the same business intrigues are again brought to bear upon the company which I represent, since Mr. Sullivan, accompanied by an engineer, has presented himself on the territory of the property of the company making explorations and saying that he was sufficiently authorized to that effect, and with the purpose certainly of denouncing the mines that the company has legally acquired, in the same manner as formerly, when it was necessary to bring the matter before the high federal court, since at that time a concession had been granted of a mine called "Felicidad," which is in reality a part of the asphalt lakes which the company has been and is still exploiting, and paying punctually to the Government the export dues mentioned in the original contract. With the exploration made by Mr. Sullivan, already referred to, the same old proceedings are again initiated, and so I apply to the Government, through your honorable agency, begging it, in the name of the company which I represent, for the necessary protection for our rights and interests, and denouncing to the Government that, by the same system formerly used, it is intended to cause prejudice to the company, be it by taking away a part of its properties or by obliging it to stand another lawsuit, all of which would mean large losses to the company and want of stability for the capital that it has invested in Venezuela.

In view of this, and confident of the spirit of justice of the Supreme Magistrate of the Republic, I beg the honorable minister to take the necessary steps so that the authorities of the district Benitez, of the present State of Cumana, may be advised of the spoliation which threatens the company which I represent.

It is justice that I beg for, in Port of Spain, British Island of Trinidad, on the 31st of March, 1900.

A. H. CARNER, *Managing Director.*

[Inclosure.]

Citizen Minister of Fomento:

I, Andres J. Vigas, of full age and residing in this city, on behalf of Mr. A. Howard Carner, director of the North American company, "New York and Bermudez Company," as shown by the annexed power of attorney legally conferred and of which a certified copy may be kept in this office, with due respect, say as follows:

I reproduce in all their parts the denunciations and petitions that, under date of March 31 last, the said director of the New York and Bermudez Company addressed, through your honorable agency, to the executive power, begging for just national protection for the concessions and rights that the Republic has guaranteed to the said company, and by virtue of which it has established and has maintained in activity during seventeen years the industrial enterprise known by this name.

Such concessions and rights, established by the contract that has been made a law of the Republic by legislative act of June 6, 1884, and which have been confirmed, in all their force and vigor, by sentence of the high Federal court under date of August 23, 1898, and have been further strengthened by special and definite title of property to certain asphalt mines in the district of Benitez, State of Cumana, issued by the National Executive on the 7th and 14th of December, 1888, and said concessions and rights could not be curtailed in any way, unless the formal declarations made by the three high powers of the Republic were ignored, as also the express laws that protect private property.

The company, on its part, has abided by the conditions it had agreed to and has never failed to punctually fulfill them, also complying with all the obligations it has contracted toward the National Government, be it in respect to optional concessions of the original contract or in respect to its special titles to mining property and to waste lands, part of the said concessions. This is easily proved by the correspondence of the company with the Government during its long life, since the Government is informed day by day of all the business transactions of the company, and the Government issues orders with reference to these transactions, and the public treasury has received important amounts derived from the fulfillment of the contract and from the special mining concessions, and the agent that the company has in Caracas for-

wards every month to this ministry, as also to the ministry of the treasury, a detailed statement relating to these transactions. And it is not out of the way to mention that the progressive and civilizing results obtained through the intelligent efforts and the capital invested by the company in the region that is its center of operations are evident; these regions, formerly unknown, uninhabited, and impenetrable to the human foot, are now open to active commerce and to progress by means of steam communication and the canalization of the Canos Frances, Guarapiche, Guarapichito, and Guanoco, which shortens by two or three days the distance from the interior to the sea, and with the drying of swampy lands of vast area, now converted into places suitable for agricultural cultivation and for the planting of extensive cocoa estates, and, lastly, with the economical impulse given by considerable sums of money circulating and the occupation given to hundreds of people in the works of the vast enterprise.

If, then, the titles and concessions of the company are not to be contested in law and right and, furthermore, the benefits that accrue to the public treasury and to the local population by reason of the fulfillment of the conditions agreed to by the company are clear, it is only just that the National Government should concur, on its part, to strengthen the laws that guarantee property and to cause the assurances that the Republic has promised it in the observance of mutual and equitable obligations.

So that in view of the fact that there have been addressed to the ministry under your honorable charge by third parties some solicitations and petitions for the purpose of obtaining authorization or title to exploit asphalt mines on the territory of the former State of Bermudez, a concession exclusively reserved to the New York and Bermudez Company by the concessions and titles that have been granted to it by the high national powers, I appeal respectfully to you, begging you to obtain from the National Executive a resolution declaring, in equity and justice, the voidness of any such solicitations or petitions, if any have been addressed to this ministry or may in future be so addressed, with the purpose of obtaining authorizations for the exploitation of asphalt in the territory of the former State of Bermudez, and to also declare null and void such petitions as may have been granted or may in future be granted, as they would be in opposition with the exclusive rights of exploitation owned by the New York and Bermudez Company, by virtue of the contract of which it is concessionnaire and of the titles of property issued by the National Executive on the 7th and 14th of December, 1888.

Another petition: I beg respectfully the Citizen Minister to advise, in the same manner and to the same effect, the superior authorities of the respective States, so that they may decide what is right.

It is justice that I appeal for, in Caracas, April 26, 1900.

ANDRES J. VIGAS.

[Inclosure.]

Citizen Minister of Fomento:

I, Andres J. Vigas, of full age and residing in Caracas, in the name and on behalf of Mr. A. H. Carner, director of the North American company "New York and Bermudez Company," have the honor to address myself to you, with all due respect, and say as follows:

On the 26th of April ultimo I addressed to this ministry a petition in which I reproduce the denunciations and petitions made to the same ministry on the 31st of March of the same year by the said director of the New York and Bermudez Company, and I appeal to the supreme government begging it to take the necessary steps for the protection and guarantee of the legal rights, titles, and concessions legally acquired in Venezuela by the said company, and which rights, titles, and concessions need the positive protection of the National Executive, on account of certain facts which the same company has already brought to the notice, once and again, of the proper Government of Venezuela.

I reproduce in all and each of their parts the former explanations and petitions of the company, and so that they may act with full legal force, I have the honor to transmit to this ministry the following protest and opposition addressed lately by the director of the New York and Bermudez Company to the superior civil authority of the district of Benitez, State of Cumana, where are situated the mining properties of the company and center of the industrial exploitation that it carries on since seventeen years, by virtue of its legal concessions:

"EL PILAR (via Carupano):

"*Citizen Civil Chief of the District of Benitez.*

"I, the undersigned, American citizen, director of the New York and Bermudez Company, say as follows: With regard to the denunciation of an asphalt mine said to have been discovered by Mr. Sullivan and the citizens Eduardo Capechi, Julio

Figuera, and Antonio Vicentelli Santelli, and which according to its boundaries as shown and in view of the titles that I possess as director of the company, it is evident that said mine is situated on mining lands of our property, situated in the parish "Union," village of Guariquen, of the section Cumana of the State of Bermudez; said titles mention an extension of land of 4,800 hectares, the surface of which is asphalt for the most part, which was granted to the New York and Bermudez Company by the National Executive on the 7th of December, 1888, in accordance with the mining law of May 30, 1887, and with the decree that regulates the same, issued under date of 3d of August of same year, in force at that time. Besides the property owned by the company over the said mining concession, it also owns legally and in conformity with the formalities prescribed by the law of June 2, 1882, the dominion and property of 1 square league and 50 centesimals of waste lands which form the surface of the aforesaid asphalt mine. Both documents are registered in the lower registry office of the district of Benitez in El Pilar, on the 11th of December, 1890, under numbers 61 and 62 of book 1 corresponding to the fourth quarter of same year, on folios 100, 101, and 102 and back, over which the legal stamps have been obliterated. In view of this, and in conformity with article 45, title 4, of the Mining Code in force, I formally call your attention and I protest once and as many times as may be necessary against any acts of that or any other authority that may affect or injure the valuable interests of the North American company of which I am director, and which are placed under the protection and safeguard of the laws in force in the Republic.

"It is justice that I appeal for in Guanoco, April 25th, 1900.

"A. H. CARNER, *Director*."

I so declare it for the purpose of justice, at Caracas, May 11, 1900.

ANDRES J. VIGAS.

The Secretary of State to Chargé Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 2, 1900.

Do all you can for the protection of rights of New York and Bermudez Asphalt Company, with due regard for rights of other Americans.

HAY.

The Secretary of State to Chargé Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 13, 1900.

I am informed that two previous communications directing you to ask Venezuelan Government to protect rights of New York and Bermudez Asphalt Company have been ineffective. See President Castro immediately and notify him that this Government will regard with the greatest concern any assault upon the just property rights of the New York and Bermudez Company. Answer.

HAY.

Mr. Russell to Secretary of State.

[Telegram.]

CARACAS, *October 17, 1900.*
(Received 1.50 p. m.)

Last cable instructions in regard to New York and Bermudez Company have been carried out.

RUSSELL.

Mr. Russell to Mr. Hay.

No. 513.] LEGATION OF THE UNITED STATES,
Caracas, October 20, 1900.

SIR: I have the honor to inform you that in accordance with your last cable instructions I addressed a note to the Venezuelan Government in regard to the rights of the New York and Bermudez Company in Venezuela. I herewith inclose a copy of my note with a copy and translation thereto. The reply from the foreign office came very late to-night and I have not yet answered.

I have, etc.,

WILLIAM W. RUSSELL.

Minister Russell to Minister of Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, October 17, 1900.

MR. MINISTER: Referring to several informal conversations I have had with your excellency in regard to the dispute between the New York and Bermudez Asphalt Company and the owners of a mine called "La Felicidad," I now have the honor to inform you that I am in receipt of instructions from Washington by which I am directed to request you to say to His Excellency the President that the United States Government will view with the gravest concern any assault upon the rights of the New York and Bermudez Company in Venezuela.

I therefore hope that your excellency will see to it that the above-mentioned company is accorded the fullest justice.

I take, etc., WILLIAM W. RUSSELL.

Minister of Foreign Affairs to Mr. Russell.

[Translation.]

UNITED STATES OF VENEZUELA,
MINISTRY OF FOREIGN AFFAIRS,
Caracas, October 20, 1900.

SIR: I have to inform you that this morning I informed the Supreme Chief of the Republic of the contents of your note of the 17th instant in regard to the dispute which appears to exist between the "New York and Bermudez Company" and the owners of a mine called "La Felicidad." You refer in terms, which can be viewed by this Government in any other than a pleasant sense, to the grave concern with which the United States will view any assault upon the rights of the first-mentioned company.

The nature of the affair, which is absolutely one for the courts to settle, increases the surprise with which your communication is viewed.

In accordance with instructions from the Supreme Chief I have to inform you that in such a case the executive power would do nothing except in conformity to the law. Moreover, in the administration of justice in Venezuela our courts are as pure as those of any other enlightened and civilized country.

Accept, etc., EDUARDO BLANCO.

The Secretary of State to Chargé Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 29, 1900.

C. M. Warner, of Syracuse, N. Y., recommended by Mr. Driscoll, Member of Congress, represents to us that he is the owner of asphalt mining property, Venezuela, and that there is a question at issue as

to property rights between him and the Bermudez Asphalt Company. He is informed that you are using your influence in behalf of the Bermudez Asphalt Company against him. He requests that this Department instruct you not to use the influence of the legation in favor of his opponents in the controversy. This Department assumes that you are acting with perfect fairness as between all American citizens having interests in Venezuela and reiterates your former instructions to that effect.

HAY.

Mr. Russell to Mr. Hay.

No. 517.] LEGATION OF THE UNITED STATES,
Caracas, November 4, 1900.

SIR: Referring to your cable of October 30, 1900, in regard to the statements of Mr. C. M. Warner as to the action of this legation in the controversy between him and the New York and Bermudez Asphalt Company, I have the honor to state that in this matter I have acted in strict accordance with the instructions from the Department.

Upon receipt of the last cable I directed an official note to the foreign office, a copy of which with the reply thereto was forwarded in my No. 513 of October 20, 1900.

I have the honor, etc.,

WILLIAM W. RUSSELL.

Mr. Russell to Secretary of State..

[Telegram.]

CARACAS, *November 14, 1900.*
(Received 12.30 p. m.)

Opponents New York Bermudez Asphalt Company have in their possession a copy of letter from you informing them I have been instructed to act fairly as between American citizens. I assume cable instructions October 13 will not be changed by cable October 29.

RUSSELL.

The Secretary of State to Chargé Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, November 17, 1900.

Referring telegrams 13th and 29th ultimo, all just property rights of American corporations or of individual American citizens in Venezuela should be protected as against any adverse or discriminative action of the Government of Venezuela; but as to conflicts between rival American ownerships, whether the property is owned by American corporations or American citizens in their individual

right, you must show perfect fairness, seeing, if need be, that opportunity is given to establish legitimate rights before appropriate tribunal, if such tribunal is afforded, to determine conflicting claims of title.

HAY.

Mr. Loomis to Mr. Hay.

[Confidential.]

No. 524.] LEGATION OF THE UNITED STATES,
Caracas, December 15, 1900.

SIR: I have the honor to inclose the translation of a decree from the Official Gazette of December 13, which has an important bearing upon the affairs of the New York and Bermudez Asphalt Company and upon the interests of Messrs. Warner, Quinlan, Sullivan, and other American citizens, who, with certain Venezuelans, have claimed titles to the property of the New York and Bermudez Company in Venezuela.

The property in dispute is the asphalt lake situated in the Benitez district of the old State of Bermudez, which has been in the possession of the New York and Bermudez Company, an American corporation, for twelve years, and upon which it has expended a very large amount of money and is at present erecting the largest asphalt-refining plant in the world.

The New York and Bermudez Asphalt Company some twelve years ago bought a concession which had been regularly and legally ratified by the Venezuelan Congress, which carried with it the exclusive right to mine asphalt in the State of Bermudez. The New York and Bermudez Company then acquired title by purchase to the asphalt lake now in question and to the adjacent lands, and furthermore it took up the necessary mining claims to cover the property under the mining code then in force. These various titles were regularly acquired and duly registered and confirmed according to law.

In 1897 General Crespo, then President of Venezuela, had a provisional title to a portion of the lake claimed and occupied by the Bermudez Company granted to certain Venezuelan speculators who were his friends. Crespo who was deeply personally and financially interested in the matter, set aside the decree of Congress ratifying the concession owned by the New York and Bermudez Company. The company took the matter to the supreme court, which decided that the Executive had no right to annul a legislative decree, and confirmed the company in its property and rights. The court was asked to annul the provisional titles that had been given to portions of the New York and Bermudez Company's lake, but stated that such annulment was an Executive function. The matter slumbered until this year, when Messrs. Sullivan, Warner, and Quinlan were brought into it by the Venezuelan holders of the provisional titles. The contention turns upon a matter of fact and survey. Two commissions, composed of competent engineers, were sent out by the Government within the last five months to make surveys and prepare maps showing the territory claimed by the contending parties. Both commissions seem to have established the fact that the contention of the

New York and Bermudez Company was in the main well grounded. In short, a majority of disinterested persons with whom I have talked seem to believe that the two surveys show conclusively that the facts support the position of the New York and Bermudez Company in a very convincing manner. The agent of the New York and Bermudez Company was lead to believe by statements made by the minister of fomento and by remarks from General Castro that a decision in the case would be given in favor of his company, and definitive titles to La Felicidad and Venezuela, portions of the lake claimed by the other parties, refused. On Monday the minister of fomento asked if the New York and Bermudez Company would object to having the matter referred to the supreme court for decision, and was told that it would.

Thursday I had an informal talk with General Castro, and he told me that the Government desired to be absolutely impartial in the matter and had therefore decided to avoid responsibility by referring the matter for decision to the supreme court. I observed that the point at issue seemed to be one of fact and not of law, and added that the annulling of the provisional titles which had been granted by General Crespo was an executive function rather than a judicial one. He said that he had made up his mind to send the whole matter to the court. I then asked him if he would have power to prevent undue delay on the part of the court in disposing of the case, pointing out that delay would work great hardship to both parties and large loss of money to the New York and Bermudez Company. General Castro made answer that he had power to expedite the matter in the courts and would do so. He then discoursed at some length upon the advantage of referring the matter to the court and observed that the reports of the two commissions sent out by him to survey the property in dispute agreed in their finding. He closed the interview by expressing the hope that as the Government had determined not to decide the matter itself, but to send it to the courts, that the New York and Bermudez Company would employ able lawyers to conduct its cause.

I left with the clear understanding and firm conviction that the whole matter was to be referred to the supreme court. Indeed, General Castro said that the Official Gazette for that evening would contain a decree to that effect. Two hours later I saw the text of the inclosed executive decree, which it will be observed is in direct opposition to the statements made to me by General Castro. Not only does it make no mention of referring the matter to the court for decision as the General said would be done, but the decree itself makes a sweeping finding, and in a stroke of the pen deprives the New York and Bermudez Company of five-sixths of its property. Since the publication of this decree certain Venezuelans have "accused" the remaining sixth of the New York and Bermudez Company's asphalt lake.

This executive decree gives practically immediate possession to the owners of the two mines "La Felicidad" and "Venezuela," and there is reason to fear that there may be some violence at the lake should representatives of conflicting interests come together.

I do not assume to pass upon the merits of the case nor the facts nor legal points involved.

* * * * * * *

I understand that all of the papers, maps, and data bearing upon *this case* are to be submitted to the Department for its consideration

and information. It seems to me the case is one of far-reaching importance, for, in a sense, there appears to be involved in it the question: Are legitimately conducted American enterprises and property lawfully acquired by Americans to be disposed of to suit the convenience of military dictators in foreign countries?

I have, etc.,

FRANCIS B. LOOMIS.

Decree of General Castro, dated December 10, 1900, and published in the Gazette Official of the United States of Venezuela, No. 8105, issued on Thursday, 13th of December, 1900.

UNITED STATES OF VENEZUELA,
MINISTRY OF ENCOURAGEMENT,
DEPARTMENT OF TERRITORIAL WEALTH,
Caracas, December 10, 1900. (90 and 42.)

Resolved:

On the 17th of July of the present year Mr. A. H. Carner, as director of the New York and Bermudez Company, presented a petition to this ministry praying that the definitive title of ownership of an asphalt mine called "Felicidad," which was granted by the National Government on the 30th of November, 1897, shall de declared void, and also objecting that the definitive title be granted of another asphalt mine called "Venezuela," of which Messrs. Julio Figuero, Eduardo Capecchi, and Antonio Vincentelli Santelle had obtained the provisional title, it having been granted by the provisional president of the State of Sucre. Both mines—"Felicidad" and "Venezuela"—are situated to the southeast of the village of Guariquen in the municipality Union in the Benitez district of the State of Sucre.

The New York and Bermudez Company allege as the basis of their petition that both mines, "Felicidad" and "Venezuela," are situated within the limits of the mining concession and the plot of lands, of which it is the owner, under titles granted the 7th and 14th of December, 1888, and that the contract entered into by the National Government on the 15th of September, 1883, of which the company is cessionary, grants to it the exclusive right to exploit the asphalt in the former State of Bermudez. To clear up the matter, the Supreme Chief of the Republic, through this ministry, and by resolution dated the 6th of September last past, ordered a commission composed of the engineers named, one by the National Government, one by the New York and Bermudez Company, and the other by the representative of the owners of the mine "Felicidad," to repair to the lands in dispute and to make plans thereof. This commission consisted of Drs. Julio Blanco, Jesús Muñoz Tebar, and Jerman Jimenez. The two latter have each presented a plan of the entire lands in dispute and their topographical correctness is certified by Dr. Julio Blanco. In virtue thereof and considering that the contract entered into by the National Government with Mr. Horatio R. Hamilton on the 15th of September, 1883, does not grant to the New York and Bermudez Company the exclusive right to exploit the asphalt existing in the former State of Bermudez, since in the contract of which this company is cessionary the like monopoly is not stipulated and can not be presumed, but must be clearly and precisely expressed, and in case of doubt all presumption must be in favor of liberty; considering that the definitive title granted by the National Government on the 7th of December, 1888, concedes to Mr. A. H. Carner, secretary of the New York and Bermudez Company, the ownership of a mine situated at 20 kilometers from the village of Guariquen, at an elevation of 180 meters above the level of the sea; that the title granted on the 14th of December, 1888, grants a portion of lands of the superficies of the said mining concession, situated also at 20 kilometers from the village of Guariquen; considering that, according to the plans presented by the commission of engineers, the asphalt lake which the New York and Bermudez Company is exploiting, is situated at 10 to 12 kilometers from the village of Guariquen and at an elevation of 4 or 5 meters above sea level, that is to say, 8 kilometers above the plan shown by the title deeds of their mining concession; considering that according to the said plan the mines "Felicidad" and "Venezuela" are situated at less than 11 kilometers from the said village of Guariquen, and are not therefore included within the mining concession which belongs to the New York and Bermudez Company, according to the title deeds produced by the said company; considering that even if the situation of the asphalt lake which the New York and Bermudez Company is exploiting were the same as that shown in their title deeds, it could not oppose the rights of third parties, because in its deeds no boundaries are given, and these are essential to determine the ownership of real etate;

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *December 21, 1900.*
(Received 3.45 p. m.)

Venezuelan Government formally refuse to suspend decree and states unofficially New York Bermudez Company will probably lose remainder unless they acquire it anew, as it is now open to the world. Decree announced illegal by eminent lawyers; also violates concessions. Important papers will reach Washington next week.

LOOMIS.

Mr. Loomis to Mr. Hay.

No. 527, Confidential.]

LEGATION OF THE UNITED STATES,
Caracas, December 22, 1900.

SIR: Upon receipt of your cablegram of the 18th instant in reference to the intentions of the Venezuelan Government in the case of the New York and Bermudez Asphalt Company, I went within an hour after it reached me, on the morning of the 19th instant, to see the minister of foreign affairs. I asked him to kindly give me a specific official explanation of the scope and effect of the decree of December 10 granting titles to certain large portions of the asphalt lake as against the New York and Bermudez Company, which has held and exploited this property for about fourteen years.

The minister said he was not prepared to answer this question without consulting with some of his colleagues and with General Castro. He asked me to return the following morning at 10 o'clock for my answer, which I did. The minister then stated that the effect of the decree (a copy of which I inclose for convenience) was to give title and immediate possession to the persons named in the decree to those parts of the New York and Bermudez Company's property claimed by them. "Then," said I, "this decree, in effect, deprives the New York and Bermudez Company of a large portion of its most valuable asphalt property without a hearing, and practically nullifies its concession, which the Supreme Court of Venezuela decided in 1898 could not be done by an executive act?"

"Well," said the minister, after much hesitation, "the decree gives the parties named in it possession of the property claimed by them, and the New York and Bermudez Company can appeal to the courts if they are not satisfied. That course is always open to them."

"If the decree has the effect and meaning your excellency indicates," I answered, "then I must ask you, under instructions from my Government, to suspend its operation until the case can be further investigated; and, as a matter of justice, it would seem that the situation which existed prior to the promulgation of this decree should be restored pending such investigation. I am further instructed to say that the Government of the United States will learn with deep concern of any unjust attempt through irregular means to take the property of the New York and Bermudez Company or to nullify its vested rights. This is a responsible and important Ameri-

considering that in conformity with clause 18, No. 15, of the national constitution of 1881, corresponding to clause 13, No. 16, of the constitution now in force, mines are the property of the States of the union, which transfer the administration thereof to the Federal Government in order that they should be administered under a uniform system of exploitation, in accordance with the law on that behalf, and that consequently, monopoly of the exploitation of asphalt could not be comprehended in the said contract with Mr. Horatio R. Hamilton, because for that purpose it would be necessary that the law in force at that date should have been repealed; and considering that in the proceedings lodged in this ministry by Messrs. Julio Figuera, Eduardo Capecchi, and Antonio Vincentelli Santelli, for the purpose of obtaining the final adjudication of an asphalt mine called "Venezuela," in the municipality of Union, in the Benitez district of the State of Sucre, it appears that the requirements of the Mining Code now in force have been complied with, in consideration of the propositions above set forth, the Supreme Chief of the Republic,

Resolves:

1. The said petition of the New York and Bermudez Company, dated the 17th of July last past, praying that the definitive title of the mine "Felicidad" be declared null, and opposing the grant of the definitive title of the mine "Venezuela" to Messrs. Julio Figuera, Eduardo Capecchi, and Antonio Vincentelli Santelli, who have obtained the provisional title thereto, subject to the provisions of law in that behalf, is without standing.

2. Messrs. C. M. Warner and P. R. Quinlan remain entitled to the full enjoyment of their rights as owners of the mine "Felicidad," of which the definitive title was granted by the National Executive on the 30th of November, 1897.

3. Let the title of ownership be granted to Messrs. Julio Figuera, Eduardo Capecchi, and Antonio Vincentelli Santelli for the mine called "Venezuela," situated in the municipality of Union, in the district of Benitez, in the State of Sucre.

Let it be communicated and published.

For the National Executive:

RAMÓN AYALA.

The Secretary of State to the United States Minister, Caracas.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 18, 1900.

It has been reported to the President that the Venezuelan Government has attempted to confiscate entire property of New York and Bermudez Company and to nullify and cancel its vested rights which it has enjoyed peacefully for over thirteen years, on the faith of which large sums of American capital have been invested. This is an American corporation, owned by American citizens. Such action, if report be true, would be regarded by this Government with grave concern. Ask immediately for suspension of such action if intended until the cause can be fully investigated and report fully by wire and letter, stating facts and your recommendation.

HAY.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *December 20, 1900.*
(Received 11.20 p. m.)

Am officially informed that decree dispossesses New York Bermudez Company of property in question. Have asked the Venezuelan Government as a matter of justice to restore status existing before promulgation of its decree by annulling or suspending same. Answer promised by Friday.

LOOMIS.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *December 21, 1900.*
(Received 3.45 p. m.)

Venezuelan Government formally refuse to suspend decree and states unofficially New York Bermudez Company will probably lose remainder unless they acquire it anew, as it is now open to the world. Decree announced illegal by eminent lawyers; also violates concessions. Important papers will reach Washington next week.

LOOMIS.

Mr. Loomis to Mr. Hay.

No. 527, Confidential.]

LEGATION OF THE UNITED STATES,
Caracas, December 22, 1900.

SIR: Upon receipt of your cablegram of the 18th instant in reference to the intentions of the Venezuelan Government in the case of the New York and Bermudez Asphalt Company, I went within an hour after it reached me, on the morning of the 19th instant, to see the minister of foreign affairs. I asked him to kindly give me a specific official explanation of the scope and effect of the decree of December 10 granting titles to certain large portions of the asphalt lake as against the New York and Bermudez Company, which has held and exploited this property for about fourteen years.

The minister said he was not prepared to answer this question without consulting with some of his colleagues and with General Castro. He asked me to return the following morning at 10 o'clock for my answer, which I did. The minister then stated that the effect of the decree (a copy of which I inclose for convenience) was to give title and immediate possession to the persons named in the decree to those parts of the New York and Bermudez Company's property claimed by them. "Then," said I, "this decree, in effect, deprives the New York and Bermudez Company of a large portion of its most valuable asphalt property without a hearing, and practically nullifies its concession, which the Supreme Court of Venezuela decided in 1898 could not be done by an executive act?"

"Well," said the minister, after much hesitation, "the decree gives the parties named in it possession of the property claimed by them, and the New York and Bermudez Company can appeal to the courts if they are not satisfied. That course is always open to them."

"If the decree has the effect and meaning your excellency indicates," I answered, "then I must ask you, under instructions from my Government, to suspend its operation until the case can be further investigated; and, as a matter of justice, it would seem that the situation which existed prior to the promulgation of this decree should be restored pending such investigation. I am further instructed to say that the Government of the United States will learn with deep concern of any unjust attempt through irregular means to take the property of the New York and Bermudez Company or to nullify its vested rights. This is a responsible and important Ameri-

can corporation which has been peacefully engaged in business in Venezuela for about fourteen years. It has invested large sums of money in this country and has, I am informed, recently erected the largest asphalt-refining plant in the world in Venezuela. It is also one of the most considerable employers of labor in the country. The titles to its property were regularly acquired through due process of law, and the original surveys were made by an official engineer of the Venezuelan Government. It seems to me hard that a responsible, long-established company should be deprived of its property and rights without the hearing which the constitution of Venezuela guarantees to everyone in such cases. What is more, several of the distinguished lawyers of Caracas have assured me that the decree in question is irregular and unconstitutional."

The minister made answer that he was not a lawyer and could not discuss the constitutional question. He said he had no power to suspend the decree, but would consult with General Castro, remarking that he was quite sure that my request would not be granted. I then insisted upon a prompt answer, and he fixed the following morning for it. The next day when I called the minister said he had discussed the matter fully with General Castro and that the decree would not be suspended. He said it was regular and legal and that the New York and Bermudez Company's titles were all very defective. He then added unofficially, "To show our kindly disposition in this matter, I want to tell you informally that you should inform the New York and Bermudez Company that they must 'accuse' the land that remains or it will be taken up by outsiders under the mining code." I thanked the minister for his suggestion and observed that since the decree served notice to the world that the company had no rights, either under its titles or concession, I had been informed the remaining property not disposed of by the decree had been "accused" by outsiders within a few hours after the promulgation of that document. To all of my pleas for considerate and not overhasty disposition of this case the minister made answer that the company could seek redress in the courts if it chose so to do. But as the Government absolutely controls the courts and may at will remove or imprison a judge, it would seem that recourse to the courts might not be an expedient replete with satisfaction, though the minister assured me that the Venezuelan courts in the matter of integrity and ability do not suffer by comparison with any others in the civilized world.

I very much regret that the obligation to try to give you an adequate insight into this seeming attempt to despoil the New York and Bermudez Company of its pitch lake compels me to relate some unpleasant things. From the moment of the exchange of my first word on the subject with General Castro on the 13th instant, down to the present time, it has been very evident that the course of the Government had been taken and that all discussion of the matter on its part was nothing more than diplomatic trifling. The consistently unfriendly attitude of the Government and of individual ministers toward the New York and Bermudez Company may, of course, be susceptible of more than one construction, but one only occurs to me, and it is not necessary that I should say what it is. The Government admits that the New York and Bermudez Company has conducted its business in Venezuela in a lawful and wholly satisfactory manner and that no cause for complaint against it exists.

It is freely charged here that certain officials holding far from humble stations have a large pecuniary interest in the success of the effort to deprive the New York and Bermudez Company of the major portion of its asphalt property. It is often asserted that an impression obtains in certain official circles that the asphalt lake in question is worth millions of dollars and that the New York and Bermudez Company will gladly pay a huge price to get it back. I have been informed, upon seemingly good authority, that an officer of General Castro's household has approached a representative of the New York and Bermudez Company here with a proposition to place him in possession of the Venezuela mine, the larger of the two described in the decree, for $300,000 cash and a royalty of $50,000 a year. I do not affirm any of these things of my own knowledge or repeat them as truth, but refer to them in order that you may know the manner in which many intelligent and disinterested Venezuelans account for the attitude and action of the Government in this affair. I should also observe that the minister of foreign affairs has a family connection with the clever attorney who is leading the fight against the New York and Bermudez Company and who has a very large contingent interest in the result, and who is also very anti-American in his opinions. It is possible that the minister may unconsciously have been influenced or prejudiced by the earnest and subtle arguments of this attorney to whom the outcome means so much.

The minister of foreign affairs and General Castro as well have more than once intimated that this controversy is nothing more than a fight between rival Americans. I think this is not a just view of the matter. The largest portion of the New York and Bermudez Company's pitch lake is given by the decree to a number of Venezuelans and they are, according to the decree, its owners. The title has not been, I am informed, transferred to any other person or persons. The other mine, La Felicidad, is owned by Messrs. Warner and Quinlan, both American citizens. They acquired their interest in this mine about June last, if I am correctly informed, and were perfectly aware that the property they expected to claim was held by the New York and Bermudez Company and had been occupied by them for many years. In short, they knew that they were buying "a lawsuit" as the saying is, and that the enterprise was a purely speculative one. There is not in this legation a document or paper of any sort filed for or by Messrs. Warner and Quinlan. Neither they nor their agents have ever had any conversation with me on the subject in question, though Mr. Russell was twice visited, I believe, by their agents. If there was any document here to present in their behalf I would most gladly forward it for your consideration. I would be pleased to set forth their side of the case for I want a full record of it to go to the Department. So far the matter seems in the main to be one between the Venezuelan Government and the New York and Bermudez Company. The interests of the other Americans are only contingent and depend upon governmental action in dispossessing the New York and Bermudez Company. Or, if this be not true, it must be true in respect to the mine called "Venezuela," that it is a question which concerns only the Government and the New York and Bermudez Company, in the first instance, at least. I am forced to the conclusion that the New York and Bermudez Company has been made the victim of an organized raid upon its rights and property by speculators in private and official life.

The merits of the case from a legal and technical point of view, as well as the citation of facts, will be placed before you in the form of certified copies of all documents and maps that are on record in this matter.

Considering the circumstances surrounding this case, to which I have referred, by suggestion, it is probable that it will take very strong representations to cause the Venezuelan Government to reconsider what it has done. I am told that interested parties have furnished the Venezuelan Government with a copy of the Department's cable to Mr. Russell of November 17, and that has had some effect in causing the Government to maintain its present attitude. I do not know this to be true and no reference to it has ever been made to me by anyone connected with the Government.

I have consulted three of the most highly considered lawyers here, one of whom was recently a member of General Castro's cabinet, about the legality of the decree and they all declare that there is no doubt of its irregularity. They maintain that it is both illegal and unconstitutional; that the minister of fomento usurps judicial functions and that it nullifies an act of Congress which the Executive is not competent to do. That it, in effect, abrogates the concession of the New York and Bermudez Company and that, furthermore, it deprives them of property without a hearing; in short, it is held to be a wholly arbitrary, dictatorial instrument.

I am informed by the agent of the New York and Bermudez Company that, acting under the advice of his attorneys, he will at all hazards retain possession of the pitch lake in question, and that an armed force has been sent to hold it. So if the Government tries to put the new owners into possession, as it now seems bent on doing, there is likely to be a conflict of an unpleasant nature.

Notwithstanding the representations I have made, I infer that the Venezuelan Government is somewhat under the impression that the Government of the United States regards this whole matter merely as a dispute between Americans upon equal terms for an ordinary commercial advantage.

I think I should be furnished with instructions to make some clear, strong, positive representations and if they are of no avail I suppose there is nothing left, save to make them good, if the Department, upon the examination of the facts, so determines.

I am, etc., FRANCIS B. LOOMIS.

Mr. Loomis to Mr. Hay.

No. 258.] LEGATION OF THE UNITED STATES,
Caracas, December 23, 1900.

SIR: I transmit herewith a complete set of all the maps and the essential documents in the case of the Venezuelan Government and the New York and Bermudez Asphalt Company. These maps and documents are certified copies. The remaining documents will be furnished you in a few days. I also inclose a synopsis of the documents which was filed here by the attorney of the New York and Bermudez Company. It is a concise statement of the record, but the documents to which it refers are not in the order indicated, though they are all herewith inclosed.

I am, etc., FRANCIS B. LOOMIS.

[Inclosure in 528.]

SYNOPSIS CONTROVERSY NEW YORK AND BERMUDEZ COMPANY WITH THE UNITED STATES OF VENEZUELA.

The events in this controversy of the New York and Bermudez Company with the Government of Venezuela are as follows:

(1) The Horatio R. Hamilton contract.

On the 15th of September, 1883, the National Executive, through the minister of improvements (fomento), made a contract with Horatio R. Hamilton of the following tenor:

"The minister of fomento of the Republic, by order and with the authority of the President, for the one part, and for the other part, Horatio R. Hamilton, have entered into the contract contained in the following articles:

"ARTICLE 1.

"The Government grants to Horatio R. Hamilton the right of exploring and exploiting the natural production of the forests existing in wild lands of the State of Bermudez; he being permitted to extract from them wood for construction, for cabinetmakers' work, and for any other industrial use; as well as the resins, plants, and aromatic seeds, or fit to be used for making perfumes, essences, dyes, or for medicinal purposes.

"The section of Barcelona is excluded from this privilege in what refers to exploitation and export of its woods.

"ARTICLE 2.

"The term of this contract shall be twenty-five years to count as from this date; and during that time the Government shall not grant similar concessions, for the State of Bermudez, to any other person.

"ARTICLE 3.

"Horatio R. Hamilton shall be able to import, with special privileges, the machinery, utensils, and tools required for the exploitation of the aforesaid productions in the State of Bermudez. At the time of making each importation he shall obtain the corresponding order for exemption of duties, presenting at the same time a list of the supplies he is going to import, and fulfilling at the respective custom-house the requisitions of the law for the dispatch of said supplies.

"ARTICLE 4.

"The Government grants to Horatio R. Hamilton the right to navigate with small steamers the caños and navigable rivers of the State of Bermudez, he being authorized to take for fuel the necessary wood to be had in the wild forests.

"ARTICLE 5.

"Horatio R. Hamilton binds himself to pay unto the public treasury 2 bolivars for each 999½ kilograms of asphalt that he may export, and 5 centimals of bolivar for each kilogram of any of the natural productions above mentioned, excepting wood and lumber, presenting in each case at the collecting office in which the payment is made a manifest proving the number of kilos exported. The duties to be paid by wood and lumber shall be fixed subsequently by an additional article to this contract.

"ARTICLE 6.

"If the productions referred to in this contract were sold in the country, Horatio R. Hamilton shall pay the same dues set forth in the above article, as well as those dues that may be fixed for the wood.

"ARTICLE 7.

"The Government shall not burden with any other taxes the productions that Hamilton is to exploit, and in conformity with the constitution and laws, the states and municipios shall not either be able to so burden them.

"ARTICLE 8.

"The Government also grants Horatio R. Hamilton the right to exploit asphalt in the said State of Bermudez.

"ARTICLE 9.

"Horatio R. Hamilton binds himself to begin the execution of this contract within the term of six months, which term can be extended for another six months, at the option of the Government, to count as from the date in which the contract has been approved of the federal council, in conformity with the law governing the matter, and the want of compliance to any of the conditions herein set forth, annul de facto the present contract.

"ARTICLE 10.

"Horatio R. Hamilton can transfer the rights and obligations that derive from this contract to another person or persons, giving advice to the Federal Executive.

"ARTICLE 11.

"The doubts and controversies to which this contract may give rise shall be decided by the Tribunals of the Republic, in conformity with its laws.

"Made two of same tenor and date, at Caracas, on the 15th of September, 1883.

"HORATIO R. HAMILTON.
"M. CARAAOÑO."

The additional article called for under article 5 of the above contract was signed by both parties on the 19th of October, 1883. On the 5th of June, 1884, Congress formally approved said contract in its complete form. On the 6th of June, 1884, the constitutional president and his minister of fomento signed and countersigned the resolution of Congress, which thereby became the law of the land. The complete contract and its approval in due form are to be found in the "Recopilacion de Leyes y Decretos de Venezuela, tomo XI, pagina 114, No. 2, 642," the official publication of the laws of the Republic.

A certified copy of the complete contract and the proceedings approving the same is hereto annexed, marked "Exhibit A."

This contract was acquired in October, 1885, by the New York and Bermudez Company, a corporation duly organized and existing under the laws of the State of New York. The transfer of the rights and obligations of this contract was legally made in conformity with the stipulations contained in article 10 of said contract, and was duly communicated to the Government of Venezuela, which thereafter gave in due form its consent and approval to such transfer.

A certified copy of the certificate of incorporation of the New York and Bermudez Company; a certified copy, with translation, of papers filed in Venezuela necessary to secure to the company its right to do business in the country under the civil and commercial codes of Venezuela; a certified copy of the contract of transfer from Hamilton to the company; a certified copy, with translation, of the approval of the transfer by the Venezuelan Government, are all included in Exhibit B, hereto annexed.

In the Official Gazette, No. 7213, of the 11th of January, 1898, appeared, under date of January 4, 1898, the following decree.

"UNITED STATES OF VENEZUELA,
"MINISTRY OF FOMENTO,
"DEPARTMENT OF TERRITORIAL RICHES,
"*Caracas, January 4, 1898.* (87 and 39.)

"Resolved: Viewing that the New York and Bermudez Company, cessionaire of the contract made with Horatio R. Hamilton on the 15th of September, 1883, to which articles were added on the 19th of October of same year and 30th of May, 1884, to exploit, in the State of Bermudez, asphalt, woods, resins, and other natural products of the forests existing in the wild lands of the said State, have not carried through the said contract in the term granted them to that effect nor subsequently to that term; viewing that their exports of natural productions have been limited exclusively to certain quantity of asphalt from the deposit that they own as per concession obtained in conformity with the mining law; that it can not well be said in favor of the force of this contract that the said company have incurred expenses with regard to works and constructions, because these have only been incurred for the exploitation of the *said deposit; that* the extraordinary concessions granted to the company by article 1

of their contract were granted so that the Government should receive as a compensation the sums that the company would pay for export of natural productions, but the company having made no such exports the national treasury has been deprived of the receipt of said sums; that the lack of execution of said contract and the monopoly therein granted forbid or prevent the working and opening of the public wealth, with great prejudice to the country; and that article 9 of the said contract sets forth that the noncompliance of any of its conditions de facto annuls the contract: The citizen President of the Republic, with the approval of the cabinet and the deliberative vote of the Government council,[a] declares the caducity of the aforesaid contract, without infringing the rights which, according to law, the New York and Bermudez Company may have by virtue of mining concessions.

"Let this be communicated and published.

"For the National Executive,

"J L. ARISMENII."

A certified copy of this decree is found in Exhibit D, hereto annexed.

This decree was made because the mining claim La Felicidad, more fully described later—a scheme to invade the rights of the New York and Bermudez Company, supported by members of the then existing Government—was in conflict with the right of the company under the Hamilton contract, and was an attempt to remove the obstacle of the Hamilton contract which prevented the enjoyment of the claim. This decree was attacked by the New York and Bermudez Company in the courts of Venezuela, and after a long and bitter fight the high federal court entered the following decree, in which the court declares that, in conformity with the views already expressed—

"The executive resolution issued by the National Government, under date of 4th of January of this year, by which is declared the caducity of the contract of which the New York and Bermudez Company is cessionaire, is of the number, order, and nature of acts foreseen and qualified by articles 117 and 118 of the national constitution; and in consequence, and the procuror general (attorney-general) of the nation having been previously heard, this high court declares:

"1. As per tenor of articles 117 and 118 of the constitution, the executive resolution issued by the National Government under date of 4th of January of this year, by which was declared the caducity of the contract of which the New York and Bermudez Company is cessionaire, is null and void.

"2. The declaration of nullity now made by this high court leaves free the rights that the contracting parties have, or may think that they have, to be tried in a legal way before the competent tribunal.

Given in the Hall of the High Federal Court, in the Capitol of Caracas, on the 23d of August, 1898. Year 88 of the Independence and 40 of the Federation. C. Yepes, hijo, M. Hernandez, M. Planchart Rojas, Jorge Anderson, E. Balza Dávila, Jose Manuel Juliac, Antonio Zarraga, Jorge Peryeyra, J. A. Lossada Piñeres, C. Jimenez Reholledo, Secretary. (Official Gazette of September 17, 1898. No. 7421.)

A certified copy of the decree, with the record of the proceedings before the court, is a part of Exhibit D. This exhibit also includes a pamphlet issued by Mr. A. H. Carner in April, 1899, in which the controversy is fully described.

To complete the chronological order of events relating exclusively to the rights of the New York and Bermudez Company under the Hamilton contract, we have only to insert two decrees, of the date of July 25, 1900, reading as follows:

"I, Dr. Guillermo Tell Villegas, minister of fomento of the United States of Venezuela, having considered the petition dated the 4th day of the present month, which Mr. A. Howard Carner, managing director of the New York and Bermudez Company, has addressed to this department, and having seen the favorable report of the director of territorial wealth on the said petition, and having carefully examined the records in the archives of this ministry relating to the said company, certify:

"That the New York and Bermudez Company has fulfilled, up to date, the engagements and obligations of the contract of which it is cessionary, entered into with the executive power on the 15th of September, 1883, to which additions were made on the 19th of October following, approved by National Congress by law of the 5th of June, 1884, and confirmed by the High Federal Court, by sentence of August 23, 1898, and that therefore the said contract is in full legal force and effect.

"On the petition of the interested, I issue this certificate, at Caracas, July 23, 1900. Year 90 of the Independence and 42 of the Federation. C. T. Villegas Pulido."

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[a] This is untrue. This resolution was issued without the previous and constitutional deliberation of the Government council. The vote of this body was only obtained subsequently, in its meeting of the following 11th day of that month, as is shown by the respective act published in the Official Gazette of the 14th, No. 7218.

["United States of Venezuela, Ministry of Fomento, Department of Territorial Wealth, Caracas, July 23, 1900.]

"*Resolved*, Having considered the petitions, dated the 26th of April and 11th of May of the present year, which the New York and Bermudez Company have made to this ministry, bearing in mind that the contract of which the said company is cessionary, entered into with the National Government on the 15th of September, 1883, and approved by national congress on the 5th of June, 1884, sets forth under article 2 thereof that the Government grants to it likewise the right to exploit the asphalt of the State of Bermudez and considering that article 8 of the said contract provides that the Government shall not grant equal concessions for the State of Bermudez to any other person; the Supreme Chief of the Republic has resolved:

"1. That the said company may exercise each and every of the rights granted to it under the said contract, in the manner and under the terms set out in the said contract and at any time whatever within the term provided in article 8; and

"2. That the New York and Bermudez Company has the right of preference in every case of denounciation of asphalt mines or unreclaimed lands which constitute or are within the limits of the concession, on having previously complied with the requirements of the respective laws on the subject. To be communicated and published For the National Executive. G. T. Villegas Pulido."

Certified copies of these decrees are found in Exhibit E, hereto annexed.

Under these decrees certain attempts to secure rights to deposits of asphalt in the old State of Bermudez, outside of the deposit at Guariquen, in the district of Benitez, of the present State of Cumana, have been defeated, but as they have no direct bearing upon the present controversy, it is unnecessary to refer to them further.

II. *Definitive titles of the New York and Bermudez Company to mines and lands.*

Inasmuch as the rights of the company under the Hamilton contract include simply a right to exploit the asphalt found within the State of Bermudez for a period of twenty-five years from the date of the contract, which term ends in 1908, in the years 1888 and 1889 Mr. A. H. Carner, the secretary and general manager of the company, acting on behalf of the company, took out under the then existing Codes of Mines and of Wild Lands, title to a tract of land situate in the parish of Union, section of Cumana, of the State of Bermudez, extending from north to south 8 kilometers and from east to west 6 kilometers, and also title to all the mines of asphalt situated within this area of 4,800 hectares. On this land was situated the largest and most valuable lake of asphalt in the United States of Venezuela. On this ground were built the refineries and works of the company; a railroad 6 miles in length and all necessary docks, warehouses, etc., were also built. It was found necessary, owing to the difficulties of the country, to abandon the attempt to export asphalt by way of the little pueblo or village of Guariquen, and a new town was built in what was up to that time a wilderness, named Guanoco, and here was erected the company's plant. Here for about thirteen years the business of exploiting asphalt was successfully carried on, with no interference or molestation other than that incident to doing business in the country. The facts above stated, the volume of business, and the extent of the enterprise are well proved by the papers included in Exhibit C, hereto annexed.

A certified copy of the title to the mines and the title to the lands and a certified copy of the map, a part of said titles, surveyed at the time by the official surveyor appointed by the Government of Venezuela, is hereto annexed and marked "Exhibit F."

The titles to lands and mines follow exactly the prescriptions of the Codes of Wild Lands and Mines then in force, as will appear by an examination of the extracts from the material portions of said codes, which, with a translation of the same, are included in Exhibit F. The prescriptions of the mining codes of 1891 and 1893 and all subsequent regulations of any nature have been strictly complied with, as is shown by the papers in Exhibit C.

It will be observed that the company has paid, not only the annual tax on each hectare of mining land, as required by the Mining Code of Venezuela now in force, but has also paid the duty expressed in the Hamilton contract for all asphalt exported.

An examination of the titles shows that a title was asked for by the company to mining lands which are situated to the southeast at a distance from Guariquen of 20 kilometers, along a road constructed by the company, up to a house, the property of the company, on a road situated on a little hill just before arriving at a little bridge of wood which leads over a lagoon to the surface of the deposits of asphalt, and that the lands were bounded by mangroves and swampy lands on all sides.

The lands and mines are situated in an almost impenetrable wilderness and a country most difficult of exploration. The road mentioned was originally an Indian

trail which wound around the bases of the hills, which almost join each other. As the years went by the road to Guariquen was considerably shortened by cuttings over the hillsides, until to-day the distance along the road to Guariquen does not exceed 12 kilometers.

In the spring of 1897, immediately after Mr. A. H. Carner, the general manager of the company, on whom the burden of development and work of the enterprise had fallen, had left on account of ill health, an intrigue was set on foot, which began at first in the spite of certain petty landowners at Guariquen, who were disappointed that the works of the company were located at Guanoco instead of at Guariquen. The brains of the enterprise was Mateo Guerra Marcano, a lawyer and influential politician of Carupano. He managed the intrigue successfully and secretly. The preliminary steps were taken so carefully that hardly more than a rumor came to the ears of the officers of the company. Prompt actions were taken by them. On the 31st of August, 1897, Guillermi Hamirez, as resident agent in Caracas, filed the first of a long series of protests, which read as follows:

"Citizen Minister of Fomento: The undersigned, in my capacity as agent, resident in this city, of the North American Company established in New York under the name of the New York and Bermudez Company, before you with all respect appear and say:

"It has come to my knowledge that various individuals are making surveys of lands in the parish Union of the section of Cumana of the State of Bermudez, with the object of accusing mines of asphalt, and as such proceedings cause great prejudice to the interests and rights of the company as contractor of the National Government, and as, on the other part, in making said surveys a part of the lands that the company have in exploitation have been invaded, I apply to you, Citizen Minister, to denounce that fact and to protest in due form against whom it may concern, since the New York and Bermudez Company is the only person which may, as per article 2 of their contract, exploit and export asphalt in the State of Bermudez; and consequently I make legal opposition against the pretension that I have denounced, in case said pretension should be presented to this ministry.

"The undersigned has the honor to state to the Citizen Minister that the New York and Bermudez Company duly fulfills their duty as contractors, as they have proved many times, by way of their works of exploitation and by the numerous and important constructions at Guariquen and Guanoco, and, lastly, by the amounts they pay unto the national treasury, through the custom-house of Caño Colorado, on each exportation that they make, in conformity with the conditions stipulated in the contract, which fix at 2 bolivars the tax on every 999½ kilograms of asphalt exported, and this, Citizen Minister, is an evident proof of the rights that the company have acquired, since, notwithstanding the protectionist spirit of the Mining Code, which only stipulates a tax of 50 centimals of bolivar per hectare under exploitation to mines of this sort, the company have paid on all their exportations up to this date the tax stipulated in article 5 of their contract made with the National Government.

"I feel that I ought also to state before the minister, as homage to his patriotic purpose of raising and shining in that ministry, that the company, jealous of the fulfillment of their duties, have procured by all possible means the enlargement and prosperity of the territory that they exploit in that beautiful eastern region, and to that effect it affords me pleasure to call the minister's attention to the different publications that have been made with reference to the New York and Bermudez Company, and, very specially, to the reports and notices that I have had the honor of presenting to that office as agent of the company.

"I respectfully beg that the annexed appointment be returned to me, leaving a proper copy amongst the documents that refer to the company, and I likewise beg that all the petitions and reports presented to that ministry by the undersigned or his son, Guillermo Hamirez Martel, in the name and on behalf of the company, be also annexed to those documents. It is justice that I implore. At Caracas, August 31, 1897. Guillermo Hamirez."

A certified copy of this protest, another protest dated on September 25, 1897, in which the names of the four conspirators are given, with a translation of the same, together with certified copies and translations of the protest of November 15, 1897, and November 14, are included in Exhibit G, hereto annexed.

In spite of these protests and the personal appeal of the New York attorney for the company, General Crespo, then President, granted the definite title to a mine to which they have given the name "La Felicidad" on the 30th of November, 1898. The consideration for this action was a sum of money to be paid when the mine was disposed of or sold. Within the last four months, after the title was transferred to Americans, as hereafter stated, for the sum of $40,000, the Crespo estate demanded $20,000 as its share, by means of a letter written by Madame Crespo to Dr. Arturo Ayala, who held power of attorney for and acted on behalf of the vendors.

A certified copy of all the papers on file at the ministry of fomento, relating to this title, together with a translation of the same, and a certified copy of the map showing the position of the mine, is included under Exhibit H, hereto annexed.

An examination of Exhibit H shows that the exact location of the mine, with reference to the New York and Bermudez Company's mines, is nowhere clearly indicated, but that while every measurement is placed apparently with accuracy, in fact the boundaries are concealed.

On the 11th of January, 1898, was published the decree annulling the Hamilton contract, referred to in page 4 of this synopsis. The title states that stakes of hard wood, marked with the initials of the owners, have been placed in all of the angles of the claim, and these stakes so marked appear within the limits of the lands and mines granted to the New York and Bermudez Company, as is shown later. The company then fought to restore this concession and succeeded in August, 18 8, by decree of the high federal court.

Whilst this fight was in progress, three other residents of Guariquen a cus d, on the 18th of February, 1898, a mine of asphalt of 300 hectares, which they say, in the act of denunciation, is situated in the municipality of Union, bounded on the north and west by woods, on the south by the mining concession of the New York and Bermudez Company, and on the east by the mine Felicidad. Their stakes are on the lake of asphalt within the boundaries of the company's lands and mines. These two claims occupy about five-sixths of the surface of the asphalt lake, which is the property of the company.

On the 6th of April, 1898, a protest was made to the civil head of the district of Benitez by Mr. A. H. Carner, in behalf of the company and against the denunciation. This protest was duly filed on April 20, 1898, prior to the formal act of giving possession, which took lace on the 10th of May, 1898. In spite of the protest and other efforts on the part of the company a provisional title was granted, on the 3d of June, 1898, to the claim, and a map was filed. Certified copies of all papers relating to this claim, on file at the ministry of fomento, translations of the same, certified copy of the map and a copy of the official publications of the district of Benitez, with a translation of the protest of the company, above referred to, are included in Exhibit I, hereto annexed.

In the summer or fall of 1899, Patrick Sullivan, the secret agent of Patrick R. Quinlan and Charles M. Warner, both residents of Syracuse, N. Y., came to Port of Spain and then to Venezuela for the purpose of securing an asphalt mine. He pursued his inquiries for some time, finally hearing of Felicidad. He at once took steps to investigate the matter, going with Quinlan to the actual location of the mines, and was informed by the employees of the company of the location of the property. Mr. Quinlan subsequently had an interview with Mr. A. H. Carner, and was informed that the claim Felicidad was an attempted intrusion on the company's property. The various steps of Sullivan and Quinlan are related in a series of protests made by the company to the minister of fomento, one being filed on the 31st of March, 1900, the second on April 3, 1900, the third on April 26, 1900, and the fourth on the 11th of May, 1900. Certified copies of these papers, together with a translation of the same, are included in Exhibit J, hereto annexed.

In the early part of June, 1900, Quinlan, to the joyful surprise of the vendors, took the title in the name of himself and C. M. Warner, of the mine, the sum of $40,000 being placed in escrow to await the return to Caracas of the registered deed of transfer. A certified copy of this deed, with a translation of the same, is hereto annexed, called "Exhibit K."

This deed shows that the purchasers were fully aware of the defects in the title to the mine and had full information of the rights of the New York and Bermudez Company, the grantors expressly freeing themselves from any liability by reason of the existence of such rights.

On the 17th of July, the following petition was filed on behalf of the company:

"Citizen Minister of Fomento A. Howard Carner, citizen of the United States of America, in my capacity as director of the New York and Bermudez Company, before you, with all respect state, as follows:

"The said company is owner of a tract of land consisting of a square league and 50 centesimals, and of a mine of asphalt comprised within those lands, situated in the district of Benitez of the State of Cumana, as shown by the definite titles of adjudication issued by the Government of this Republic on the 14th and 7th of December, 1888, respectively, the which definite title to the said mine was revalidated on the 26th of May, 1893, and was conceded prior to any other title. On the 30th of November, 1897, the ministry under your respectable management issued a resolution to the effect that the definite title be granted to an asphalt mine that was called 'Felicidad,' and recently another mine called 'Venezuela' has been accused and the provisory

title to the same has been obtained from the Government of the State of Cumana, both mines being situated within the boundaries of the lands and asphalt mines of which the company are the owners. And, consequently, the concessions granted to other persons subsequently to the titles that the company owns, being invalid and without any legal value, the undersigned begs the National Government to declare it so, as a safeguard and guarantee of the rights of the New York and Bermudez Company. It is justice that I ask for at Caracas, July 17, 1900. A. H. Carner."

A certified copy of the original of said petition is included in Exhibit L, hereto annexed.

On the 23d of July, 1900, the following resolution was issued in the Official Gazette, No. 7986, of 25th of the same month:

"Doctor Guillermo Tell Villegas Pulido, minister of fomento of the United States of Venezuela, considering the petition addressed by Mr. A. Howard Carner, director of the New York and Bermudez Company, under date of July 17 of this year, in which he begs that the definite title granted on the 30th of November, 1897, to a mine of asphalt called 'Felicidad,' be declared insubsistent and without any legal value; the said mine consisting of 283 hectares and being situated in the district of Benitez of the State of Bermudez, as also the provisory title issued on the 13th of June, 1898, by the president of the State of Bermudez to a mine, also of asphalt, called 'Venezuela,' and consisting of 300 hectares, more or less, situated in the same district of Benitez of the State of Bermudez, the said concessions being comprised within the boundaries of the asphalt mine owned by the New York and Bermudez Company, the definite title to which was granted to that company on the 7th of December, 1888, revalidated on the 26th of May, 1893, and granted prior to any other title; and having studied the documents referring to the matter which exist in the archives of this ministry, the Supreme Chief of the Republic has been pleased to decide:

"That the citizen Dr. Tomas C. Llamozas, appointed per interim technical inspector of mines of the Republic, shall go to the place where the said mines are located, so that, in view of the documents and original plans that the interested parties may present to him, he shall proceed to make a topographical map that will set forth the true location of the said mines, and shall likewise present a report on the matter that causes this resolution. Let this be communicated and published. For the National Executive, G. T. Villegas Pulido."

[United States of Venezuela, [ministry of fomento. Department of territorial wealth. Caracas, July 23d, 1900 (90 and 42)].

"*Resolved*, The leave of absence applied for by the citizen Eudoro Urdaneta, technical inspector of mines of the Republic, which he begs for on account of ill-health, is hereby granted; and by order of the Supreme Chief of the Republic, let Dr. Tomas Llamozas be appointed per interim technical inspector of mines of the Republic, during the time of the leave of absence that has been granted. Let this be communicated and published. For the National Executive, G. T. Villegas Pulido."

Certified copies of these decrees are included in Exhibit L, hereto annexed.

Publication of the decree in the Gazette is by law notice to all the world, as appears from the extract published in each number of the Gazette.

At the earliest opportunity, Dr. Tomas C. Llamozas, in his character of technical inspector of mines, proceeded to perform the duty imposed on him and submitted the plan which he had surveyed. A certified copy of the plan with the formal note of presentation and the acknowledgment of the minister of fomento, and a translation thereof, are included in Exhibit L. Inspection of this map shows that the mining claims Felicidad and Venezuela are squarely within the boundaries of the property of the New York and Bermudez Company.

Before the return of the commissioner, the cabinet had been changed, Gen. Ramon Ayala succeeding Guillermo Tell Villegas Pulido, as minister of fomento.

On the 21st of August, 1900, the following protest was filed by Sullivan and his attorney, Doctor Zuloaga:

"Citizen minister of fomento. I, Patrick Sullivan, as attorney for Charles M. Warner and Patrick R. Quinlan, owners of the mine La Felicidad, to you with all respect say as follows: In the Official Gazette of July 25, 1900, No. 7986, there appears a resolution of the ministry of fomento, referring to a petition of Mr. A. Howard Carner, director of the New York Bermudez Company, asking for a declaration of nullity for the definite title issued on the 30th of November, 1897, for an asphalt mine called "Felicidad," consisting of 233 hectares and situated in the district of Benitez of the State of Bermudez. In that resolution, Dr. Tomas Llamozas is appointed to go over to the place where the asphalt mines are located, and is ordered to, in view of the documents and plans that the interested parties may present to him, proceed to make a topographic map that shall set forth the true situation of the mines. The plans of the

mine of the Bermudez Company, as well as those of the Felicidad, are to be found in the archives of the ministry of fomento. If the Government wished to know the true situation of the mines, it was therefore useless to order the making of new plans. On behalf of the owners of the Felicidad, I have caused one plan to be made with the two plans already mentioned, so that it may easily be seen how unjustifiable is the pretension of the New York and Bermudez Company. As shown by those plans the Felicidad mine is situated at a distance of 2,640 meters from that of the New York and Bermudez Company, but the title of the Bermudez, which is not in conformity with its plan, shows at a distance even greater, at 11,200 meters. I shall refuse any report made by Engineer Llamozas that may be made without the agreement and intervention of the owners of the Felicidad and under the direct inspection of the representatives of the New York and Bermudez Company. I refuse it, furthermore, because the owners of the Felicidad in no case would accept a report from Mr. Llamozas in this matter, and because any plan that may not be in accordance with the one that I present, is contrary to the truth of the facts. The petition of Mr. Carner is furthermore absurd and illegal, since the National Executive has no faculty to declare the nullity of a mining title, and I beg that it should be so declared, deciding that the parties accept the plan that I have presented and which is annexed to the documents referring to the matter that exist in the archives of the ministry of fomento. Caracas, August 21, 1900. P. Sullivan. Nicomedes Zuloaga, lawyer."

A certified copy of this paper is included in Exhibit M, hereto annexed. Also in the same exhibit are included the correspondence, with translation, between Mr. A. H. Carner, on behalf of the company, and the minister of fomento, as well as a further statement made by Doctor Llamozas on the 3d of September, 1900. In this exhibit is also included a copy of a plan prepared for Mr. Sullivan, in which he takes the plan of the company and the plan of Felicidad and reduces them to one scale. The minister of fomento was much impressed by this fanciful plan. On the 6th of September, 1900, the following Government resolution appeared in No. 8023 of the Official Gazette of that date:

["United States of Venezuela. Ministry of fomento. Department of territorial wealth. Caracas, September, 6, 1900.]

"*Resolved*, Having seen the petition made under date of 21st of August ultimo by the North American citizen, P. Sullivan, attorney of the owners of the mine called 'Felicidad,' and Dr. Nicomedes Zuloaga, counsel for the same, in which they refused to accept any report presented by Dr. Tomas C. Llamozas, for not having been made with their agreement or intervention of the owners of the Felicidad, the Supreme Chief of the Republic has been pleased to decide:

"1. That a new topographical plan be made of the mining concessions New York and Bermudez and Felicidad.

"2. That through this ministry be appointed an engineer to go to the place where the said mines are located.

"3. That each party interested be notified of this resolution, so that as soon as possible each of the parties may appoint an engineer who shall act with the engineer appointed by the Government to make the plan.

"4. That each of the parties shall pay the engineer that they shall so appoint, and that between both of them and by equal parts they shall pay the engineer appointed by the Government.

"5. That the parties state in writing and give due notice to this ministry as the engineers they shall have appointed.

"6. That to the engineers so appointed be given simple copies of the titles of property and plans of the New York and Bermudez Company and of the Felicidad.

"Per separate resolution shall be appointed the engineer referred to in article 2.

"Let this be communicated and published. For the National Executive. Ramon Ayala."

A certified copy of the original of this decree, a translation of the same, copies, together with translation, of the protests filed on behalf of the company, the action of the Government on September 11, 1900, in appointing Blanco as its engineer, and the appointment of German Jimenez as the engineer for the company, and Sullivan's appointment of Muñoz Tébar as the engineer of Quinlan and Warner, are shown in Exhibit N, hereto annexed.

This commission of three engineers proceeded to the parish of Guariquen and made a survey of the mines. Exhibit O includes certified copies of the map of Jimenez, with whom Blanco, the Government man, worked; the report of Blanco, who made no separate plan, and the plan of Muñoz Tébar, surveyor of Quinlan and Warner. Inspection of these plans confirm the report of the first commissioner, Doctor Llamazos, and both reports confirm in every essential respect the accuracy of the original survey made by the appointee of the Government in 1888.

Since the filing of the plans on the 7th day of November, 1900, the matter has been awaiting of the consideration of the ministers in cabinet.

During the month, from the 7th of November until the 7th of December, 1900, Mr. A. H. Carner, the manager of the New York and Bermudez Company, had every assurance from the President of the Republic and the minister of fomento that in case the commission of the engineers found the facts to be as he stated them that the petition of the 17th of July, 1900, would be granted.

The only additional fact that we need mention is that Mr. Sullivan has received from Messrs. Quinlan and Warner since the 14th of November last up to the 10th of December, a period coincident with that when the action of the Government on the report of the engineers is under the consideration of the Venezuelan cabinet, the sum of 181,800 bolivars, equivalent to about $37,000, in addition to sums used in the payment of legitimate legal and personal expenses.

Under date of the 13th of December, 1900, in the Official Gazette, No. 8105, dated the 10th of December, 1900, appeared the following decree:

["United States of Venezuela. Ministry of encouragement. Department of territorial wealth. Caracas, December 10, 1900. 90 and 42.]

"*Resolved*, On the 17th of July of the present year Mr. A. H. Carner, as director of the New York and Bermudez Company, presented a petition to this ministry praying that the definitive title of ownership of an asphalt mine called 'Felicidad,' which was granted by the National Government on the 30th of November, 1897, shall be declared void, and also objecting that the definitive title be granted of another asphalt mine called 'Venezuela,' of which Messrs. Julio Figuero, Eduardo Capechi, and Antonio Vincentelli Santelli had obtained the provisional title, it having been granted by the provisional president of the State of Sucre. Both mines, Felicidad and Venezuela, are situated to the southeast of the village of Guariquen, in the municipality of Union, in the Benitez district of the State of Sucre.

"The New York and Bermudez Company allege as the basis of their petition that both mines Felicidad and Venezuela are situated within the limits of the mining concession and the plot of lands, of which it is the owner, under titles granted the 7th and 14th of December, 1888, and that the contract entered into by the National Government on the 15th of September, 1883, of which the company is cessionary, grants to it the exclusive right to exploit the asphalt in the former State of Bermudez. To clear up the matter the Supreme Chief of the Republic, through this ministry, and by resolution dated the 6th of September last past, ordered a commission composed of the engineers named, one by the National Government, one by the New York and Bermudez Company, and the other by the representative of the owners of the mine Felicidad, to repair to the lands in dispute and to make plans thereof. This commission consisted of Drs. Julio Blanco, Jesús Muñoz Tebar, and Jerman Jimenez. The two latter have each presented a plan of the entire lands in dispute and their topographical correctness is certified by Dr. Julio Blanco. In virtue thereof and considering that the contract entered into by the National Government with Mr. Horatio R. Hamilton on the 15th of September, 1883, does not grant to the New York and Bermudez Company the exclusive right to exploit the asphalt existing in the former State of Bermudez, since in the contract of which this company is cessionary, the like monopoly is not stipulated and can not be presumed but must be clearly and precisely expressed, and in case of doubt all presumption must be in favor of liberty; considering that the definitive title granted by the National Government on the 7th of December, 1888, concedes to Mr. A. H. Carner, secretary of the New York and Bermudez Company, the ownership of a mine situated at 20 kilometers from the village of Guariquen, at an elevation of 180 meters above the level of the sea; that the title granted on the 14th of December, 1888, grants a portion of lands of the superficies of the said mining concession, situated also at 20 kilometers from the village of Guariquen; considering, that according to the plans presented by the commission of engineers, the asphalt lake, which the New York and Bermudez Company is exploiting, is situated at 10 to 12 kilometers from the village of Guariquen, and at an elevation of 4 or 5 meters above sea level—that is to say, 8 kilometers above the plan shown by the title deeds of their mining concession—considering that according to the said plan the mines Felicidad and Venezuela are situated at less than 11 kilometers from the said village of Guariquen, and are not therefore included within the mining concession, which belongs to the New York and Bermudez Company, according to the title deeds produced by the said company; considering that even if the situation of the asphalt lake, which the New York and Bermudez Company is exploiting were the same as that shown in their title deeds, it could not oppose the rights of third parties, because in its deeds no boundaries are given, and these are essential to determine the ownership of real estate; considering that in conformity with clause 18, No. 15 of the national constitution of

1881, corresponding to clause 13, No. 16, of the constitution now in force, mines are the property of the States of the Union, which transfer the administration thereof to the Federal Government in order that they should be administered under a uniform system of exploitation, in accordance with the law on that behalf, and that consequently monopoly of the exploitation of asphalt could not be comprehended in the said contract with Mr. Horatio R. Hamilton, because for that purpose it would be necessary that the law in force at that date should have been repealed; and considering that in the proceedings lodged in this ministry by Messrs. Julio Figuero, Eduardo Capecchi, and Antonio Vincentelli Santelli, for the purpose of obtaining the final adjudication of an asphalt mine called "Venezuela," in the municipality of Union in the Benitez district of the State of Sucre, it appears that the requirements of the Mining Code now in force have been complied with, in consideration of the propositions above set forth, the Supreme Chief of the Republic—

"*Resolves.*

"1. The said petition of the New York and Bermudez Company, dated the 17th of July last past, praying that the definitive title of the mine Felicidad be declared null and opposing the grant of the definitive title of the mine Venezuela to Messrs. Julio Figuera, Eduardo Capecchi, and Antonio Vincentelli Santelli, who have obtained the provisional title thereto, subject to the provisions of law in that behalf, is without standing.

"2. Messrs. C. M. Warner and P. R. Quinlan remain entitled to the full enjoyment of their rights as owners of the mine Felicidad, of which the definitive title was granted by the National Executive on the 30th of November, 1897.

"3. Let the title of ownership be granted to Messrs. Julio Figuera, Eduardo Capecchi, and Antonio Vincentelli Santelli for the mine called Venezuela, situated in the municipality of Union, in the district of Benitez, in the State of Sucre. Let it be communicated and published. For the National Executive. Ramón Ayala."

List of exhibits.

Exhibit A.—Certified copy contract Horatio R. Hamilton with United States of Venezuela, approval of Congress, etc.

Exhibit B.—(1) Certified copy of incorporation of the company in New York. (2) Contract by which transfer was made by Horatio R. Hamilton of the contract with United States of Venezuela to the New York and Bermudez Company. (3) Certified copy of papers giving the New York and Bermudez Company right to do business in Venezuela. (4) Certified copy of approval of transfer of contract; translation of the same.

Exhibit C.—(1) Certified copies of papers on file in the office of the minister of fomento. (2) Certified copies of papers on file in the ministry of fomento.

Exhibit D.—(1) Certified copy of record of action brought by the New York and Bermudez Company against Government of Venezuela for annulling decree of January 11, 1898, and for restoration of its contract rights under the Hamilton contract; translation of same. (2) Pamphlet of A. H. Carner.

Exhibit E.—Certified copies of these decrees, July 25, 1900.

Exhibit F.—(1) Certified copies of titles to lands and mines. (2) Translation of same. (3) Certified copy of map surveyed and filed in 1888. (4) Copy relating to map filed. (5) Material portions of the Codes of Mines and Wild Lands; translation of same.

Exhibit G.—(1) Certified copy of protest of September 25, 1897. (2) Translation of same. (3) Certified copy of protests of November 15 and 14, 1897. (4) Translation of same.

Exhibit H.—(1) Certified copy of papers in which alleged title to the Felicidad was given. (2) Translation of same. (3) Certified copy of maps.

Exhibit I.—(1) Certified copy of papers in which provisory to Venezuela was given. (2) Translation of same. (3) Certified copy of map of Venezuela.

Exhibit J.—Four protests and translations.

Exhibit K.—(1) Certified copy of deed of transfer to Quinlan and Warner of La Felicidad. (2) Translation.

Exhibit L.—Proceedings to annul titles Felicidad and Venezuela. (1) Petition of July 17, 1900. (2) Translation. (3) Government decree of July 25, 1900. (4) Report and map of Llamozas.

Exhibit M.—(1) Certified copy protest Sullivan and Zuloaga. (2) Translation. (3) Protest and petition. (4) Plan of Sullivan.

Exhibit N.—Decree September 7, 1900, and protest.

Exhibit O.—Report of Government commission.

[Translation.]

I, Julio Perez Garcia, director of the department of territorial riches, in the ministry of fomento of the United States of Venezuela, do hereby certify: That in the archives of mines of this ministry there is an "expediente," the tenor of which is as follows:

[United States of Venezuela. Ministry of Fomento. Department of Territorial Riches. Caracas, November 20, 1888, 25 and 30. Resumes and report.]

"Mr. A. H. Carner, secretary of the New York and Bermudez Company, asks that a definite title of property be granted him for ninety-nine years on the asphalt mine that he has denounced in the jurisdiction of the parish Union, village of Guariquen, of the section of Cumana, in the State of Bermudez, and he incloses to that effect the provisory title of property issued by the president of the said State of Bermudez. The director who signs this document reports as follows: That the formalities prescribed by the decree that regulates the law of mines have been compiled with, and that in consequence the petition of the interested party can be granted. Francisco Pimental, hijo."

Citizen Minister of Fomento. A. H. Carner, secretary of the New York and Bermudez Company, before you appear respectfully and say as follows: That in virtue of a provisory title to certain asphalt mines, situate in the State of Bermudez, granted to the petitioner by the executive of that State and dated at Barcelona, October 23, 1888, which is inclosed, and in accordance with the decree that regulates the law of mines of May 30, 1887, I respectfully beg this ministry to grant me the definite title to the said mines. It is a favor that I expect. At Caracas, November 6, 1888. b. b. New York and Bermudez Co., A. H. Carner, secretary.

[United States of Venezuela. Presidency of the State of Bermudez. Administrative department.]

Inasmuch as Mr. A. H. Carner, secretary of the New York and Bermudez Company, has fulfilled all the formalities prescribed by the decree of August 3, 1887, that regulates the law of mines of May 30 of same year with regard to the asphalt mine that he has denounced as discovered by him in the jurisdiction of the parish Union, village of Guariquen, section Cumana, of the State of Bermudez, and upon which the technical inspector of mines, Mr. J. Orsi de Mombello, has made a favorable report, stating that he has made a long stay on the said mine and that this is situate at a distance of 20 kilometers to the southeast of the village of Guariquen and 180 meters over the level of the sea, and having found a vast surface of a circular shape, all in swampy lands, over which are found large deposits of asphalt, a sample of which is inclosed; the executive of the State, with the favorable vote of the council of administration and in conformity with articles 25 and 26 of the said decree, has been pleased to grant and hereby grants the provisory title of property for two years to the said Mr. A. H. Carner, granting him at the same time the authorization he needs for applying for the definite title and to exploit in his own interest the newly discovered asphalt deposit. This is registered in the book kept to that effect and its publication in the press has been decided upon, as also it has been decided to send a copy of it to the ministry of fomento. Given at the Government Palace of the State of Bermudez, October 22, 1888, twenty-fifth year of the law and thirtieth of the federation. The president of the State, B. Rauseo. The secretary-general, Ildefonso Nuñez.

[United States of Venezuela. Executive Power. Administrative department. Barcelona, October 22, 1888, 25 and 30. No. 335.]

Citizen Minister of Fomento, Caracas: In compliance with article 29 of the decree that regulates the law of mines, of August 3, 1887, I have the honor to send you herewith inclosed a copy of the provisory title that I have granted to Mr. A. H. Carner, secretary of the New York and Bermudez Company. God and the federation. B. Rauseo.

Caracas, November 6, 1888. Mr. Vicente Coronado, Minister of Fomento, City. Dear Sir: It being impossible for me to go personally to present you my respects, on account of a serious illness that has bound me to my bed, I have the pleasure to introduce you my secretary, Mr. Moses Salas, who will hand you several documents connected with wild lands and asphalt mines, and who will be able to give you any information you may wish in that respect. I shall consider as a special the prompt dispatch of these matters. Hoping to have the pleasure of meeting you personally within a few days, I remain, yours respectfully, A. H. Carner.

[United States of Venezuela. Ministry of fomento. Department of territorial riches, Caracas, December 5, 1888. 25 and 30.]

Resolved: Mr. A. H. Carner, secretary of the New York and Bermudez Company, having fulfilled the formalities prescribed by the decree that regulates the mining law now in force regarding the denunciation of an asphalt mine that he has discovered in the jurisdiction of the parish Union, village of Guariquen, in the section of Cumana, in the State of Bermudez, having also produced the provisory title of property of the mine, issued by the president constitutional of the said State of Bermudez; the President of the Republic, in conformity with article 9 of the aforesaid decree, with the vote of the federal council, resolves that the definite title of property to the said asphalt mine be granted for ninety-nine years in favor of Mr. A. H. Carner, secretary of the New York and Bermudez Company. Let this be communicated and published. For the Federal Executive, Coronado. Federal Council. Approved. Caracas, December 5, 1888. The chairman, S. Pacheco.

[The President of the Republic, with the vote of the Federal Council.]

Inasmuch it appears that Mr. A. H. Carner, secretary of the New York and Bermudez Company, has asked the Government to grant him the definite title of property to an asphalt mine which, according to the rights that article 23 of the decree that regulates the laws on the matter gives him, he has denounced before the constitutional president of the State of Bermudez, the which mine is situate in the jurisdiction of the parish Union, village of Guariquen, in the section of Cumana, of the State of Bermudez, at a distance of 20 kilometers to the southeast of the said village of Guariquen and at 180 meters over the level of the sea; having also proved this denunciation by presenting the provisory title to said mine, granted on the 22d of October of this year by the constitutional president of the State; and having fulfilled the formalities prescribed by the decree that regulates the mining law, dated August 3, 1887, has decided to grant to Mr. A. H. Carner, secretary of the New York and Bermudez Company, the property of the said mine in all the extension that corresponds to it and with respect to all the asphalt deposits comprised in the same, in accordance with the legal denunciation, made before the said president of the State of Bermudez. The present title shall be registered in the respective registry office, and shall give the right to the cessionaire and his heirs for the term of ninety-nine years to the exploitation and enjoyment of the said mine, with the legal restrictions and without any mining tax on its produce, as it is in the case determined by article 40 of the decree that regulates the mining law, already cited. Given, signed, sealed, and countersigned in the Federal Palace, at Caracas, December 7, 1888. Year twenty-fifth of the law and thirtieth of the federation. Juan Pablo Rojas Paul. Countersigned, the minister of fomento, Vicente Coronado. It is a copy, Francisco Pimentel, hijo.

[Cable address: Bermudez. Trinidad. Home office: 55 and 57 Beaver street. New York. Branch office, Trinidad, W. I. Trinidad, W. I., June 10, 1891.]

Señor Minister of Fomento of the United States of Venezuela, Caracas. Sir: We have the honor to advise you that we have to-day appointed Mr. Guillermo Ramirez, a resident of the federal district, as agent of this company in that city. In consequence, we beg you that, as long as we do not decide otherwise, you recognize only the said gentleman in that capacity, in all matters concerning our business with the respected Government of Venezuela. We have the honor to remain, your obedient servants, New York and Bermudez Company, A. H. Carner, secretary and managing trustee.

Citizen Minister of Fomento: The signatory, a resident of the federal district, with all due respect, before you appears and says as follows: By letters received from Mr. A. H. Carner, secretary of the New York and Bermudez Company, he authorizes me to solicit from the National Government, through your respectable medium, the necessary permission for the vessels that go to Caño Colorado for the asphalt that the company is exploiting by virtue of the concession granted to it under date of December 7, 1888, could be allowed to go as far as the harbor of Guanoco (Guariquen), where there is already built a wharf suitable for the accommodation of large vessels, fulfilling in each case the formalities prescribed by the laws on the matter. This permission, Mr. Minister, is necessary insomuch as large vessels can not go as far as Caño Colorado, nor are they used to doing so, where is situate the marine custom-house, and the difficulties that exist in that place are many and such as can not be surmounted, for such ships to go to take in their cargo, on account of the distance of the custom-house from the navigable caños and also by reason of the enormous distance of the anchorage of this sort of vessels, and even for smaller vessels which can

not either anchor in Caño Colorado. All these troubles that must be got over and of which the Federal Executive already knows, lead me to expect the prompt dispatch of this my petition, since the cargo of asphalt is ready at Guanoco, since a few weeks, and we expect that the first vessel will arrive for account of the company at any moment. Furthermore, Mr. Minister, taking into consideration the distance from here to Caño Colorado, I beg that you would ask the minister of finance to transmit the permission that I solicit, by telegraph. I implore justice, at Caracas, September 24, 1891. Guillermo Ramirez. Again: To further strengthen what I have said above, permit me to call your attention to the paragraph of the report of the custom-house of Caño Colorado which refers the New York and Bermudez Company, and which is found in the memoria presented by the minister of finance to the legislative federal body, in the present year. Dated as above. Ramirez.

[United States of Venezuela. Ministry of Fomento. Department of Territorial Riches. No. 1002. Caracas, October 14, 1891.]

Citizen Minister of Finance: In accordance with what was decided yesterday in cabinet, I have the honor to inclose the petition in which Mr. A. H. Carner, secretary of the New York and Bermudez Company, begs that the vessels of said company that may be destined for taking the asphalt that they exploit and which was granted them by the National Executive on December, 1888, be allowed to go as far as Guanoco (Guariquen) Amengual.

Citizen Minister of Finance: The undersigned, sufficiently authorized by Mr. A. H. Carner, secretary of the New York and Bermudez Company, before you, with all respect, say as follows: The British schooner *Carrie Easter*, of 154 tons burden, Captain Minnis, should have arrived at Caño Colorado, to load for asphalt of the said company, and has not been able to do so in the same port, on account of the great number of difficulties there are in that locality, and there being a good landing place at Guanoco, where the mines are situated, I come to beg you to grant to the New York and Bermudez Company permission to the effect that the British schooner *Carrie Easter* may go as far as Guanoco to take in her cargo, fulfilling previously the legal regulations. And the distance between this capital and Guanoco being so great, I beg also that this permission be transmitted by telegraph. I implore justice, at Caracas, October 19, 1891. Guillermo Ramirez.

[Ministry of Finance. Department of custom-houses. No. 1610. Caracas, October 20, 1891.]

Citizen Minister of Fomento: I have the honor to return to that ministry, as a matter for you to decide, the petition of Mr. Carner, secretary of the New York and Bermudez Company, which you were pleased to inclose in your communication to me, dated 14th instant, and numbered 1002, in which petition he begs that the large vessels that go to Caño Colorado to load the asphalt that they exploit in virtue of the concession that was granted them, be allowed to go as far as the nonofficial port of Guanoco (Guariquen), to take in the said cargo. This ministry does not see any difficulty in the way of granting this petition, provided the following formalities be fulfilled, according to article 13 of the Law XVII of the Law of Finance: 1, That in each case the permission be previously asked for from the Government, expressing the name of the vessel that is going to take in the cargo and provided this vessel comes in ballast; 2, that the company give bail, also previously and to the satisfaction of the Government, to the director of customs at Caño Colorado, to respond for the good behavior of the vessel and with the condition that this must go to the custom-house of Caño Colorado after having taken in her cargo, to be dispatched thence legally to her destination; and all the expenses that this operation may cause must be for account of the company; and 3, that in each case the parties interested must make their petition to the ministry of fomento, through which their concession was granted, so that said ministry may order that of finance, which in its turn will transmit the necessary orders to the custom-house at Caño Colorado. To this end I also inclose a petition made to this ministry by Citizen Guillermo Ramirez, as agent of the same gentleman, secretary of the company, Mr. Carner, asking for permission to ship asphalt at Guanoco. God and the Federation. Vicente Coronado.

Citizen Minister of Fomento: Guillermo Ramírez, in representation of Mr. A. H. Carner, secretary of the New York and Bermudez Company, before you with all respect say as follows: The company having an urgent need of exporting a cargo of asphalt, already in the port of Guanoco (Guariquen) and coming from its mines, in virtue of the concession to them granted by the Government in December, 1888, and the difficulties for the loading of large vessels in Caño Colorado being very great and well known, I come to beg you, Mr. Minister, to grant permission to the British schooner *Carrie Easter*, of 154 tons burden, Captain Minnis, and which coming in ballast from

Trinidad must have already arrived at Caño Colorado, so that she may be allowed to go as far as Guanoco, there to take in a cargo of some 16,000 kilos of asphalt, the company being disposed to fulfill the formalities set forth by Law XVII, article 13, and other legal dispositions. I beg likewise that, taking into consideration the distance to Guanoco and Caño Colorado, that permission be transmitted by telegraph. I implore justice, at Caracas, October 22, 1891. Guillermo Ramirez.

Citizen Minister of Fomento: The undersigned, in the name of the New York and Bermudez Company, before you in due form and with all respect, say as follows: The British brig *Harry Steward*, of 243 tons burden, will soon arrive at the port of Caño Colorado, proceeding in ballast from the island of Trinidad; as said vessel comes to take in some 240,000 kilos of asphalt from the mine that the company are now exploiting in virtue of concession made them in December, 1888, I come to beg you for the necessary permission, so that the said vessel may go as far as the nonofficial port of Guanoco, which was constructed by the company, so as to facilitate the shipping of their produce, previously fulfilling at the customs of Caño Colorado all the rules set forth by article 13 of Law XVII of the Code of Finance, and other laws in force. I beg also that, taking into consideration the distance from this city to Caño Colorado, the order be transmitted by telegraph to the director of the custom-house at that port. I implore justice, Caracas, October 26, 1891. Guillermo Ramirez.

[United States of Venezuela. Ministry of fomento. Department of territorial riches. No. 1024. Caracas, October 26, 1891.]

Citizen Minister of Finance: The Citizen Guillermo Ramirez, on behalf of A. H. Carner, secretary of the New York and Bermudez Company, says to this ministry, under date of 22d inst., as follows: (Here is copied the petition.) And I have the honor to advise you of it, so that you may transmit your orders on the matter to the respective custom-house. DandF. Amengual.

[United States of Venezuela. Ministry of fomento. Department of territorial riches. No. 1031. Caracas, October 30, 1891.]

Citizen Minister of Finance: Under date 26th instant, Citizen Guillermo Ramirez, on behalf of the New York and Bermudez Company, says as follows: (Here the petition.) And I have the honor to advise you of it, so that you may give orders on the matter to the respective custom-house. Amengual.

[United States of Venezuela. Ministry of fomento. Department of territorial riches. Caracas, November 20, 1888. 25 and 30. Resumen and report.]

The president of the State of Bermudez forwards the documents relating to the denunciation made by Mr. A. H. Carner, secretary of the New York and Bermudez Company, in the name and on behalf of the said company, of certain wild lands situate in the parish Union, district of Benitez, section of Cumana of the State of Bermudez. These lands are acquired by the petitioner in the name of the said company and they are to be used for the exploitation of an asphalt mine which it possesses on the same lands, in conformity with articles 10 and 26 of the decree that regulates the mining law now in force. The director undersigned reports: That all the formalities that regard wild lands have been fulfilled and that the title of property to said lands may be granted to the New York and Bermudez Company, provided the value of the lands is paid by them at the respective office. It is noticeable that formerly the mining lands have been purchased like culture lands, although there is no law that states expressly that it must be so. The lands of which we are now treating were valued by experts as if they were pasture lands, for as they are swampy they are not fit for agricultural purposes, according to the report of said experts and of the surveyor. Francisco Pimentel, hijo.

[United States of Venezuela. State of Bermudez. Executive Power. Administrative Department. Barcelona, October 23, 1888. Years 25 and 30. No. 336.]

Citizen Minister of Fomento, Caracas, I have the honor to submit to the consideration of the National Executive, through your respectable medium, a document consisting of ten folios, which contains the proceedings concluded in conformity with the law of June 2, 1882, upon wild lands, in virtue of a proposition of purchase made by Mr. A. H. Carner, secretary of the New York and Bermudez Company, of a mining land situate in the parish of Union, District Benitez of the Section of Cumana, State of Bermudez. God and the Federation. B. Rauseo. Barcelona, October 8, 1888.

Citizen President of the State of Bermudez, City. I, A. H. Carner, secretary of the New York and Bermudez Company, a corporation organized under the laws of the *State of New York*, United States of America, and whose work of exploitation is actu-

ally in activity by virtue of a contract entered into between the National Government and H. R. Hamilton, under date of September 15, 1883, and which contract was transferred to this company in October, 1885, and which transfer obtained the approval of the Federal Executive in December, 1885, the certificates of organization being all deposited in the archives of the ministry of fomento of the Republic, before you, in the name and on behalf of this company, with all due respect, say as follows: The company having taken the necessary steps to obtain the provisory title to certain asphalt mines situate in the State of Bermudez, on a road constructed by the company toward the southeast, for a distance of 20 kilometers from Guariquen, up to a house belonging to this company and situate on this road, over a little hill before getting to a wooden bridge which leads to the surface of the asphalt deposit and the boundaries of which are by the north, south, east and west mangrove swamps, applies by the present and in accordance with the decree on wild lands of May 24, 1882, and with article 10 of the decree that regulates the mining law of August 3, 1887, to obtain the title of property to the wild lands that comprise the mines already mentioned, for the use of exploitation work. I am, etc., A. H. Carner, secretary.

[Presidency of the State of Bermudez. Administrative Department, Barcelona, October 8, 1888.]

The present petition was presented to-day at 9 o'clock a. m.; let is so appear according to the law in the matter. B. Rauseo. The party interested, A. H. Carner. The secretary-general, Ildefonso Nuñez.

[Presidency of the State of Bermudez. Administrative Department, Barcelona, October 8, 1888.]

Resolved: Let the foregoing petition follow its legal course. The petition in which Mr. A. H. Carner proposes to purchase from the nation a parcel of land on which are situate some mines of asphalt, under the b undáries and marks expressed in the said petition, which must be published by the party interested in an official newspaper, in conformity with the law on wild lands. To effect the survey and make the topographical plan of the land, according to article 11 of the aforesaid law, let the public surveyor, Citizen J. Orsi de Mombell , be appointed; and upon accepting this appointment, let him take the legal oath before the citizen civil chief of the district of Benitez, and let him afterwards fulfill the formalities prescribed by articles 10 and 11 of the law on the matter; but he must not make the survey until such time as the municipal council of the said district shall certify that the lands proposed to be purchased are not comprised in the lands of any village, in accordance with what is set forth in the resolution of the Executive of Ma 30, 1884. Let the Council of Administration be advised of this; let this be communicated to whom it may concern and published. B. Rauseo. The secretary-general, Ildefonso Nuñez. At the same time Mr. Orsi de Mombello was duly advised. The secretary-general, Ildefonso Nuñez.

[Presidency of the municipal council of the district of Benitez. El Pilar, October 15, 1888.]

Presented to-day, and the technical engineer took the oath. Let this follow the legal course. The President, Manuel L. Hernandez. J. Orsi de Mombello, engineer.

[Presidency of the municipal council of the district of Benitez. El Pilar, October 15, 1888.]

In the extraordinary meeting of to-day, 15th inst nt, at 8 o'clock p. m., the contents of this document were considered which treat of the denunciation of wild lands situate at 20 kilometers from the village of Guariquen, in the jurisdiction of the parish Union, and a commission was appointed to report to the council whether the said lands belong to any village; the commission is composed of Councillors José M. Mattei and Francisco Nevarro. The President, Manuel L. Hernandez.

[Presidency of the municipal council of the district of Benitez. El Pilar, October 18, 1888.]

To-day, the 18th instant, at 6 o'clock in the evening, the municipal having met, the rep rt intrusted to Commissioners Mattei and Navarro was received, to the effect that the land the petition r wishes to purchase does not belong to the lands of any township. The President, Manuel Hernandez.

[Parish Union. Guariquen, October 19, 1888.]

The foregoing certifi ate having been issued by the municipal council of the district of Benitez, I went immediately over to the parish wh re are situate the lands which the secretary of the New York and Bermudez Company, Mr. A. H. Carner, proposes to pur hase, to the effect of ma ing the survey and plans of t e said lands, in onformity with the orders contained in the communication of the secretary-

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[United States of Venezuela. Ministry of fomento. De
Caracas, October 26

Citizen Minister of Finance: The Citizen Guille
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to advise you of it, so that you may transmit your orders on the matter
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[United States of Venezuela. Ministry of fomento. Department of territori
Caracas, October 30, 1891.]

Citizen Minister of Finance: Under date 26th instant, Citizen Gu
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[United States of Venezuela. Ministry of fomento. Department of territor
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[United States of Venezuela. State of Bermudez. Executive Power. Adm
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Citizen Minister of Fo o, cas, I have the honor to sub
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sisting of ten folios, wh the proceedings concluded
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Mr. A. H. C w York and Bermudez
situate in the the
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Citizen P
New York
State of New Yo

[New York and Bermudez Company, 11 Broadway, New York.]

PORT OF SPAIN,
Trinidad, B. W. I., March 31, 1900.

Citizen Minister of Fomento:

The undersigned, in his capacity as director of the New York and Bermudez Company, residing in Port of Spain (British island of Trinidad), with due respect says as follows:

After over fifteen years of quiet enjoyment of the rights acquired by the company which I represent, by transfer in accordance with the authorization of the Government of Venezuela, made by Mr. Horatio R. Hamilton, of the contract entered into with the National Executive of the Republic, under date of September 15, 1883, and approved of by the National Congress on the 6th of June, 1884, and notwithstanding the large amount of capital brought into Venezuela and the large amount of duties that the company has paid to the Government, as shown by the statistics of the proper departments, by the various reports made upon the subject and, lastly, also by judicial proofs produced in court, there has been an attempt to curtail the rights of the said company by invading the territory in which it has been carrying on its industry, with special benefit to the country on account of the heavy capital invested. On behalf of the company which I represent I have appealed to the Government for the protection necessary to insure its rights and have also gone to a trial before the high federal court, when the National Executive, taken by surprise, had issued a resolution under date of 4th of January, 1898, annulling the contract of which the New York and Bermudez Company is assignee, and the rights of the company were made clear by that high court, in the luminous sentence rendered on the 23d of August, 1898, by the chamber of last and only instance of the high federal court, in which sentence the resolution issued by he National Executive was declared null and void, in a way that admits of no controversy, on account of the legal doctrines on which it is based, and, consequently, the company was left in quiet possession of its rights, as a result of the judicial controversy, so that it was clearly established that the legal force of the contract owned by the New York and Bermudez Company admits of no discussion and until then had never been disputed, the company having carried out all its obligations and maintained its concessions in a permanent state of industrial activity, as the National Government knows through reports, official resolutions, and statistics. It was also shown that the interests of the company were threatened by other parties interested that, not considering the validity of the titles of the company, nor the prejudice occasioned to Venezuela and to other capital brought into the country for this kind of enterprise, and which is kept in fear on account of the troubles it is exposed to, obliged the company to fight for its rights before the courts of the Republic and to suspend its work for some months, with great loss to its interests, a loss that was not then taken into consideration, the rights of the company having been amply insured by the sentence of the high court of the Republic.

To-day, Citizen Minister, I take the liberty of again calling your attention to denounce the fact that the same business intrigues are again brought to bear upon the Company which I represent, since Mr. Sullivan, accompanied by an engineer, has presented himself on the territory of the property of the company making explorations, and saying that he was sufficiently authorized to that effect, and with the purpose, certainly, of denouncing the mines that the company has legally acquired, in the same manner as formerly, when it was necessary to bring the matter before the high federal court, since, at that time, a concession had been granted of a mine called "Felicidad," which is in reality a part of the asphalt lease which the company has been, and is still, exploiting, and paying punctually to the Government the export dues mentioned in the original contract. With the exploration made by Mr. Sullivan, already referred to, the same old proceedings are again initiated, and so I apply to the Government, through your honorable agency, begging it, in the name of the company which I represent, for the necessary protection for our rights and interests, and announcing to the Government that, by the same system formerly used, it is intended to cause prejudice to the company, be it by taking away a part of its properties, or by obliging it to stand another lawsuit, all of which would mean large losses to the company and want of stability for the capital that it has invested in Venezuela.

In view of this, and confident of the spirit of justice of the Supreme Magistrate of the Republic, I beg the honorable minister to take the necessary steps so that the authorities of the district Benitez, of the present State of Cumana, may be advised of the spoliation which threatens the company which I represent.

It is justice that I beg for, in Port of Spain, British Island of Trinidad, on the 31st of March, 1900.

A. H. CARNER, *Managing Director.*

general of the State of Bermudez, No. 305, dated October 8, 1888, and also in conformity with articles 10 and 11 of the law of wild lands. J. Orsi de Mombello, engineer of the Republic.

[Barcelona, October 23, 1888.]

In conformity with the anterior communication, I have the pleasure to inclose the topographic plan of the lands, which are situate at a height of 180 meters over sea level and the climate of which is generally healthy in consequence; they are not adapted for agricultural nor for breeding purposes, as they are swampy. Orsi de Mombello, civil engineer of the Republic. There is an "Official Gazette" of the State of Bermudez, No. 78, of October 12, 1888.

[Presidency of the State of Bermudez. Administrative department. Barcelona, October 23, 1888.]

The survey of the lands which Mr. A. H. Carner, secretary of the New York and Bermudez Company, proposes to purchase, having been effected, lands these situate in the parish of Union, of the district of Benitez, in the section Cumana of this State, there being also a report from the president of the council of the said district, as well as a topographic plan and another report made by the surveyor; and here being present in this office Mr. A. H. Carner, it was proceeded to appoint experts for the valuation of the said lands, according to law; on the part of the Government, the citizen Manuel Silva Medina was appointed, and on that of the interested party the citizen Moses Salas was also appointed; let these experts be notified, and should they accept the appointment, let them appear before this presidency to take the legal oath and appoint a third expert, who shall decide in case of dispute. The President, B. Rauseo. The Secretary-General, Ildefonso Nuñez. At the same time the citizens Manuel Silva Medina and Moses Salas were notified of their appointment as experts. The Secretary-General, Ildefonso Nuñez. On the same day, they appeared before the Office of the Executive power of the State and declared that they were willing to accept the appointment as experts, and being duly sworn, they took charge of the documents and sign. The President of the State, B. Rauseo. Expert Manue Silva Medina. Expert Moses Salas. The Secretary-General, Ildefonso Nuñez.

On the 23d of October of the same year the citizens Manuel Silva Medina and Moses Salas, who have been appointed as experts for the valuation of the land which Mr. A. H. Carner wishes to purchase, land this situate in the parish of Union, in the jurisdiction of the village of Guariquen, district of Benitez, of the section of Cumana; in compliance with our orders, we met on the said day and appointed as a third expert the citizen Tomas Apiz, who accepted that appointment and took the necessary oath. We proceeded to value the land, and as this is swampy, and consequently not fit for the breeding of cattle nor for agricultural purposes, as set forth in the report of Surveyor Orsi de Mombello, we have agreed upon fixing as value of this land the sum of 3,792 bolivars, which is at the rate of 79 centimals of bolivar per hectare, or of 2,000 bolivars per square league. Moses Salas. Manual Silva Medina. Carlos F. Apiz.

[Presidency of the State of Bermudez. Administrative department. Barcelona. October 23, 1888.]

Resolved, All the formalities for the acquisition of wild lands having been complied with according to the law of June 2, 1882, these seeming to be in order, having also published the petition of Mr. A. H. Carner, in which he proposes to purchase a parcel of wild land situate in Guariquen, in the jurisdiction of the parish of Union, of the district of Benitez, of the section of Cumana, and there having been no opposition, this is approved in what refers to the government of this State, and it is agreed to recommend favorably this proposition and to forward these documents to the National Executive, through the citizen minister of fomento, for the adjudication and concession of the title of property to the interested party. The President, B. Rauseo. The Secretary-General, Ildefonso Nuñez.

On the 23d instant these documents are closed; they consist of 10 folios and are forwarded to the National Executive, through the respectable medium of the citizen minister of fomento. The Secretary-General, Ildefonso Nuñez.

[United States of Venezuela. Ministry of fomento. Department of territorial riches. Caracas, September 11, 1888.]

Citizen President of the Federal Council:

Mr. A. H. Carner, secretary of the New York and Bermudez Company, in the name and on behalf of the said company, having fulfilled all the formalities prescribed by the law of wild lands and by the decree that regulates the law of mines *in force*, in what refers to the denounciation of 1 league and 54 centesimals of wild

lands for use in the exploitation of the asphalt mine therein contained, situate in the parish Union of the district of Benitez, section Cumana, of the State of Bermudez, the President of the Republic has decided that the corresponding title of adjudication be granted, and so as to be able to issue the decree, I have the honor to solicit the vote of the high body over which you preside. God and the Federation. Vicente Coronado. Federal Council. Approved. Caracas, December 11, 1888. The President, S. Pacheco.

[United States of Venezuela. Ministry of fomento. Department of territorial riches. No. 602. Caracas, December 12, 1888. 25 and 30.]

Citizen Minister of Public Credit:

Please order the commission of public credit to receive from Mr. A. H. Carner, secretary of the New York and Bermudez Company, the sum of 3,792 bolivars in bonds of the national consolidated debt of B I, or its equivalent in cash at the rate of the last public sale of that debt, value of the superficial lands of an asphalt mine, sold to the New York and Bermudez Company, and situate in the district of Benitez, section Cumana, of the State of Bermudez. God and the Federation. Vicente Coronado.

For B. 1,403.05. Received from Mr. A. H. Carner, the sum of 1,403 bolivars and 5 centimals in cash, equivalent to the sum of 3,792 bolivars in bonds of the national consolidated debt, for value of wild lands of surface of an asphalt mine situate in the district of Benitez, section of Cumana, of the State of Bermudez. Caracas, December 14, 1888. The Treasurer, J. Padilla. There is seal of the National Treasury of Public Credit.

[United States of Venezuela. Ministry of fomento. Department of territorial riches. Caracas, December 14, 1888. 25 and 30.]

Resolved, The formalities prescribed by the law of wild lands and the decree that regulates the mining law in force having been fulfilled in the denounciation made by Mr. A. H. Carner, secretary of the New York and Bermudez Company, in the name and on behalf of the said company, of 1 square league and 54 centesimals of wild lands for the exploitation of the asphalt mine that he possesses in the jurisdiction of the parish Union, district of Benitez, section of Cumana, of the State of Bermudez, the President of the Republic, with the favorable vote of the Federal Council, has decided that the corresponding title of adjudication be granted. Let this be communicated and published. For the Federal Executive, Coronado.

[United States of Venezuela. Ministry of fomento. Department of territorial riches.]

The formalities prescribed by the law of June 2, 1882, and the decree regulating the law of mines in force having been fulfilled, the National Executive, with the favorable vote of the Federal Council, has declared the adjudication, on this date, in favor of the New York and Bermudez Company, represented by their secretary, Mr. A. H. Carner, of 1 square league and 54 centesimals of wild lands that form the surface of an asphalt mine that the said company own, the which lands are acquired for the exploitation of the said mine, situate in the parish Union, district of Benitez, section of Cumana, of the State of Bermudez, and whose boundaries are: By the north, south, east, west lands covered by mangrove trees and swampy. The adjudication has been made for the sum of 1,403 bolivars, in cash, or the equivalent of 3,792 bolivars in bonds of the national consolidated debt of 5 per cent, which amount, Mr. Carner, the secretary of the company, has paid in its name, at the office of the commission of public credit; and the Government having decided that the title of property to the said lands be granted, the minister of fomento who signs declares in the name of the United States of Venezuela that, by virtue of the sale made, the dominion and property of the said lands is hereby transferred in favor of the New York and Bermudez Company, with the declaration expressed in articles 6, 7, and 8 of the mentioned law, which by their contents authorize the present adjudication, and the terms of which articles must be considered as decisive in this matter. Caracas, December 14, 1888. 25 and 30. Vicente Coronado. This is a copy. The Director, Francisco Pimental, hijo.

Citizen Minister of Fomento: I, Felix Montes, a lawyer, before you with all respect say as follows: I petition to you begging you to give the necessary orders so that the director of territorial riches may allow me to copy from the respective documents a simple copy of the following: Executive resolution granting, in favor of the secretary of the New York and Bermudez Company, the definite title of property to the parcel of wild lands which he denounced for the exploitation of the asphalt mine that he

owns in Guariquen, section Cumana of the State of Bermudez. Definite title of the same and plan of the said lands. Caracas, August 10, 1897. Felix Montes.

Citizen Minister of Fomento: Guillermo Ramirez, of over 21 years of age and at present a resident of La Guayra, before you with all respect, say as follows: Since the month of June, 1891, at which date I was no longer a public employee, I began to act as agent for the New York and Bermudez Company, whose business is the exploitation of its asphalt mines of Guariquen, parish of the section of Cumana, in conformity with the concession that was granted to the company by virtue of the contract entered into with the National Government. As I am now in the post of first "interventor" of the custom-house of La Guayra, through the honorable appointment made by the chief of the executive power, I beg you to please accept in future any petition which my son, Guillermo Ramirez Martel, may present you in the name of the said company, since, by reason of our having been accused of "legalista" revolutionaires, the petitions which I presented to that ministry were left to stand aside, this delay causing serious damages to the company. The undersigned has no doubt that, given the highness and elevated feelings of the chief of the executive power, in favor of the progress and welfare of the Republic, this petition will receive prompt attention, and the matters of the New York and Bermudez Company that are pending in that ministry will be favorably decided on behalf of such a progressive enterprise, which has already began to yield good results to the national treasury. I implore justice at La Guayra, 14th of December, 1892. Guillermo Ramirez. Received 50 centimals of bolivar for stamps. The under-treasurer, Jose del Olio.

At the petition of the American citizen, Henry R. Bean, and by order of the citizen minister, this new certified copy is issued as well as a certified copy of the plan of the New York and Bermudez Company, at Caracas, September 20, 1900. Year 90 of the Independence and 42 of the Federation. Tulio Perez Garcia. (Here is a seal of the Ministry of Fomento.)

Translation of protest.

Citizen Civil Chief of the District of Benitez, El Pilar, via Carupaño:

The undersigned North American citizen, director of the New York and Bermudez Company, before you appears and says as follows:

By my telegram of 4th instant, copy of which I inclose, you will have learned of the opposition, legal and energetic, that I have presented to that office under your charge, for it to take its legal course with regard to the denunciation of an asphalt mine said to have been discovered by citizens Eduardo Capecchi, Julio Figuera, and Antonio Vincentelli Santelli, which, according to the boundaries that they design, and in view of titles that I possess as director of the company, it is evident that that mine, which they have named "Venezuela" is situated in mining lands of our property, situated in the parish, Union, village of Guariquen, of the section of Cumana, of the State of Bermudez, the titles to which show 4,800 hectares, the largest part of surface of asphalt, which was granted to the New York and Bermudez Company by the National Executive on the 7th of December, 1888, in conformity with the mining laws of May 30, 1887, and with the regulating decree of August 3, of same year, then in force. Besides the ownership of the company over the said mining concession, they also possess legally and in conformity with the prescriptions of the law of June 2, 1882, the dominion and property of a league and 54 centesimals of wild lands which form the surface of the asphalt mine already mentioned. Both documents are registered in the office of the under registrar of the district of Benitez, in El Pilar, on the 11th of December, 1900, under Nos. 61 and 62 of the first protocol corresponding to the fourth quarter of said year, at folios 100, 101, and 102 and back, there being affixed the legal number of stamps.

By what is already said and in conformity with article 45, Title IV, of the Mining Code in force, I formally call your attention and protest once and as many times as shall be necessary against any act issued of that authority or of any other that may affect or injure the valuable interests of the North American Company, of which I am director, and which are placed under the care and protection of the laws in force in this Republic.

It is justice that I ask for.

At Caracas, on the 6th of April, 1898.

A. H. CARNER,
Director of the New York and Bermudez Company.

[New York and Bermudez Company, 11 Broadway, New York.]

PORT OF SPAIN,
Trinidad, B. W. I., March 31, 1900.

Citizen Minister of Fomento:

The undersigned, in his capacity as director of the New York and Bermudez Company, residing in Port of Spain (British island of Trinidad), with due respect says as follows:

After over fifteen years of quiet enjoyment of the rights acquired by the company which I represent, by transfer in accordance with the authorization of the Government of Venezuela, made by Mr. Horatio R. Hamilton, of the contract entered into with the National Executive of the Republic, under date of September 15, 1883, and approved of by the National Congress on the 6th of June, 1884, and notwithstanding the large amount of capital brought into Venezuela and the large amount of duties that the company has paid to the Government, as shown by the statistics of the proper departments, by the various reports made upon the subject and, lastly, also by judicial proofs produced in court, there has been an attempt to curtail the rights of the said company by invading the territory in which it has been carrying on its industry, with special benefit to the country on account of the heavy capital invested. On behalf of the company which I represent I have appealed to the Government for the protection necessary to insure its rights and have also gone to a trial before the high federal court, when the National Executive, taken by surprise, had issued a resolution under date of 4th of January, 1898, annulling the contract of which the New York and Bermudez Company is assignee, and the rights of the company were made clear by that high court, in the luminous sentence rendered on the 23d of August, 1898, by the chamber of last and only instance of the high federal court, in which sentence the resolution issued by he National Executive was declared null and void, in a way that admits of no controversy, on account of the legal doctrines on which it is based, and, consequently, the company was left in quiet possession of its rights, as a result of the judicial controversy, so that it was clearly established that the legal force of the contract owned by the New York and Bermudez Company admits of no discussion and until then had never been disputed, the company having carried out all its obligations and maintained its concessions in a permanent state of industrial activity, as the National Government knows through reports, official resolutions, and statistics. It was also shown that the interests of the company were threatened by other parties interested that, not considering the validity of the titles of the company, nor the prejudice occasioned to Venezuela and to other capital brought into the country for this kind of enterprise, and which is kept in fear on account of the troubles it is exposed to, obliged the company to fight for its rights before the courts of the Republic and to suspend its work for some months, with great loss to its interests, a loss that was not then taken into consideration, the rights of the company having been amply insured by the sentence of the high court of the Republic.

To-day, Citizen Minister, I take the liberty of again calling your attention to denounce the fact that the same business intrigues are again brought to bear upon the Company which I represent, since Mr. Sullivan, accompanied by an engineer, has presented himself on the territory of the property of the company making explorations, and saying that he was sufficiently authorized to that effect, and with the purpose, certainly, of denouncing the mines that the company has legally acquired, in the same manner as formerly, when it was necessary to bring the matter before the high federal court, since, at that time, a concession had been granted of a mine called "Felicidad," which is in reality a part of the asphalt lease which the company has been, and is still, exploiting, and paying punctually to the Government the export dues mentioned in the original contract. With the exploration made by Mr. Sullivan, already referred to, the same old proceedings are again initiated, and so I apply to the Government, through your honorable agency, begging it, in the name of the company which I represent, for the necessary protection for our rights and interests, and announcing to the Government that, by the same system formerly used, it is intended to cause prejudice to the company, be it by taking away a part of its properties, or by obliging it to stand another lawsuit, all of which would mean large losses to the company and want of stability for the capital that it has invested in Venezuela.

In view of this, and confident of the spirit of justice of the Supreme Magistrate of the Republic, I beg the honorable minister to take the necessary steps so that the authorities of the district Benitez, of the present State of Cumana, may be advised of the spoliation which threatens the company which I represent.

It is justice that I beg for, in Port of Spain, British Island of Trinidad, on the 31st of March, 1900.

A. H. CARNER, *Managing Director.*

Memorandum to the President and ministers, The New York and Bermudez Company.

The North American Company, New York and Bermudez, begs the Supreme Chief of the Republic to take the necessary steps for the protection of the company's concessions and interests situated in the Benitez district of the State of Cumana, which are threatened to-day as some individuals are trying to obtain, by surprise, from the National Executive, the grant of some industrial concessions within the concessions that the Republic has granted and guaranteed to the company and that it holds legally since 1883.

One of the company's concessions, as shown by contract of said year and approved by National Congress of 1884, is that for the exclusive exploitation during twenty-five years of the asphalt deposits that exist in the territory of the former State of Bermudez, providing that a tax of 2 bolivars should be paid on every 999½ kilograms of asphalt that should be exported.

The principal works for the exploitation of asphalt which the company owns is situated in the district of Benitez and is that of the large deposit to be seen between the Caños Guanoco and Guariquen. There is the large industrial establishment of the company and it is there that it has invested its large capital and founded the important enterprise which it has kept in activity for so many years, and which gives the Government monthly earnings of no small amount through the custom-house of Caño Colorado, by the payment of the export tax mentioned in the said contract and by the import dues on the food stuff necessary for the maintenance of over 300 workmen employed by the company.

The importance that, after seventeen years of active work, this enterprise has attained, has raised the expectations of other aspirants, either National or foreign, who wish to curtail the lawful rights of the company over the said asphalt deposit, situated in the district of Benitez.

The first claim of this sort had apparent success in 1897, when some parties obtained a concession which they called "La Felicidad" and which comprised a good portion of the asphalt deposit that the company has in exploitation. As this concession could not be valid, on account of its evident collision with the rights of the Company, the intrigue of the intruders managed to obtain, by surprise, from the Government of General Crespo, a resolution which arbitrarily declared as void the concessions of the Company.

In view of these acts of spoliation the company gave an example of the only instance in which foreign capitalists did not, in Venezuela and with such a basis, make an international claim; on the contrary, the company, confident in the justice of the land, had recourse to our local courts, demanding that the resolution of the executive should be declared void. The high federal court, by sentence of August 23, 1898, effectively declared the nullity and voidness of said resolution and reestablished the company in the full possession of its concession.

At the present time two Americans, Patrick R. Quinlan and P. Sullivan, through themselves or their agents at Caracas or Carupano, are placing new traps for the company to fall into in a similar manner to that formerly used. They have taken the authorities of the State of Cumana by surprise, saying that they were authorized by the National Government to carry out explorations in the selfsame deposit that the New York and Bermudez Company is exploiting and to inquire in the offices of the national and the State governments with the purpose of establishing their new venture; and what is more, and causes natural alarm to the director of the company, is the fact that the employees of the company at Guanoco, when they tried to oppose the intruders, were told by Sullivan, in an abusive and rough way, that the National Government, through the ministers of the interior and finance, had authorized himself and his associates to declare that they should have the help of armed soldiers, or even that a Venezuelan man-of-war should be sent to stop any protests or opposition.

This new threat to the rights of the company, the fact that the authorities of the State of Cumana have been taken by surprise under the false pretense of the support of the National Government, and the probable attempt to mislead the executive by a trap carefully hidden from its spirit of justice, have caused the director of the company to apply to the supreme chief of the Republic for legal protection, for the purpose that the authorities of said State, to which the district of Benitez belongs, may correct opportunely the irregular proceedings of those parties and their agents by an assurance that the legal concessions of the company continue to be duly upheld by the nation.

ANDRES J. VIGAS.

CARACAS, *April 3, 1900.*

Citizen Minister of Fomento:

I, Andres J. Vigas, of full age and residing in this city, on behalf of Mr. A. Howard Carner, director of the North American Company, "New York and Bermudez Com-

pany," as shown by the annexed power of attorney, legally conferred, and of which a certified copy may be kept in this office, with due respect say as follows:

I reproduce in all their parts the denunciations and petitions that, under date March 31 last, the said director of the New York and Bermudez Company addressed, through your honorable agency, to the Executive Power, begging for just national protection for the concessions and rights that the Republic has guaranteed to the said company, and by virtue of which it has established and has maintained in activity during seventeen years the industrial enterprise known by this name.

Such concessions and rights—established by the contract that has been made a law of the Republic by legislative act of June 6, 1884, and which have been confirmed in all their force and vigor by sentence of the high federal court under date August 23, 1898, and have been further strengthened by special and definite title of property to certain asphalt mines in the district of Benitez, State of Cumana, issued by the National Executive on the 7th and 14th of December, 1888—said concessions and rights could not be curtailed in any way, unless the formal declaration made by the three high powers of the Republic were ignored, as also the express laws that protect private property.

The company on its part has abided by the conditions it had agreed to and has never failed to punctually fulfill them, also complying with all the obligations it has contracted toward the National Government, be it in respect to optional concessions of the original contract, or in respect to its special titles to mining property and to waste lands, part of the said concession. This is easily proved by the correspondence of the company with the Government during its long life, since the Government is informed day by day of all the business transactions of the company, and the Government issues orders with reference to these transactions and the public treasury has received important amounts derived from the fulfillment of the contract and from the special mining concessions; and the agent that the company has in Caracas forwards every month to this ministry, as also to the ministry of the treasury, a detailed statement relating to these transactions, and it is not out of the way to mention that the progressive and civilizing results obtained through the intelligent efforts and the capital invested by the company in the region that is its center of operations are evident. These regions, formerly unknown, uninhabited, and impenetrable to the human foot, are now open to active commerce and to progress by means of steam communication and the canalization of the Caños Francés, Guaraniche, Guaranictito, and Guanoco, which shortens by two or three days the distance from the interior to the sea, and with the drying of swampy lands of vast area, now converted into places suitable for agricultural cultivation and for the planting of extensive cocoa estates; and, lastly, with the economical impulse given by considerable sums of money circulated and the occupation given to hundreds of people in the works of the vast enterprise.

If, then, the titles and concessions of the company are not to be contested in law and right, and furthermore the benefits that accrue to the public treasury and to the local population by reason of the fulfillment of the conditions agreed to by the company are clear, it is only just that the National Government should concur, on its part, to strengthen the laws that guarantee property and to cause the assurance that the Republic has promised it in the observance of mutual and equitable obligations.

So that in view of the fact that there have been addressed to the ministry under your honorable charge, by third parties, some solicitations and petitions for the purpose of obtaining authorization of title to exploit asphalt mines on the territory of the former State of Bermudez, a concession exclusively reserved to the New York and Bermudez Company by the concessions and titles that have been granted to it by the high national powers, I appeal respectfully to you, begging you to obtain from the National Executive a resolution declaring, in equity and justice, the voidness of any such solicitations or petitions, if any have been addressed to this ministry or may in future be so addressed, with the purpose of obtaining authorizations for the exploitation of asphalt in the territory of the former State of Bermudez, and to also declare null and void such petitions as may have been granted or may in future be granted, as they would be in opposition with the exclusive rights of exploitation owned by the New York and Bermudez Company, by virtue of the contract of which it is concessionnaire and of the titles of property issued by the National Executive on the 7th and 14th of December, 1888.

Another petition: I beg respectfully the citizen minister to advise, in the same manner and to the same effect, the superior authorities of the respective States, so that they may decide what is right.

It is justice that I appeal for, in Caracas, April 26, 1900.

ANDRES J. VIGAS.

Citizen Minister of Fomento:

I, Andres J. Vigas, of full age and residing in Caracas, in the name and on behalf of Mr. A. H. Carner, director of the North American Company, "New York and Bermudez Company," have the honor to address myself to you, with all due respect, and say as follows:

On the 26th of April ultimo, I addressed to this ministry a petition in which I reproduce the denunciations and petitions made to the same ministry on the 31st of March of the same year by the said director of the New York and Bermudez Company, and I appeal to the supreme government begging it to take the necessary steps for the protection and guaranty of the legal rights, titles, and concessions legally acquired in Venezuela by the said company, and which rights, titles, and concessions need the positive protection of the National Executive, on account of certain facts which the same company has already brought to the notice once and again, of the proper Government of Venezuela.

I reproduce in all and each of their parts the former explanations and petitions of the company, and so that they may act with full legal force, I have the honor to transmit to this ministry the following protest and opposition addressed lately by the director of the New York and Bermudez Company to the superior civil authority of the district of Benitez, State of Cumana, where are situated the mining properties of the company and center of the industrial exploitation that it carries on since seventeen years, by virtue of its legal concessions:

"Citizen Civil Chief of the District of Benitez. El Pilar (via Carupano): I, the undersigned American citizen, director of the New York and Bermudez Company, say as follows: With regard to the denunciation of an asphalt mine said to have been discovered by Mr. Sullivan and the citizens Eduardo Capecchi, Julio Figuera, and Antonio Vincentelli Santelli, and which, according to its boundaries as shown and in view of the titles that I possess, as director of the company, it is evident that said mine is situated on mining lands of our property, situated in the parish Union, village of Guariquen, of the section Cumana of the State of Bermudez; said titles mention an extension of land of 4,800 hectares, the surface of which is asphalt for the most part, which was granted to the New York and Bermudez Company by the National Executive on the 7th of December, 1888, in accordance with the mining law of May 30, 1887, and with the decree that regulates the same, issued under date 3d of August of same year, in force at that time. Besides the property owned by the company over the said mining concession, it also owns legally and in conformity with the formalities prescribed by the law of June 2, 1882, the dominion and property of 1 square league and 50 centesimals of waste lands which form the surface of the aforesaid asphalt mine. Both documents are registered in the lower registry office of the district of Benitez in El Pilar on the 11th of December, 1890, under Nos. 61 and 62 of book 1, corresponding to the fourth quarter of same year, on folios 100, 101, and 102 and back, over which the legal stamps have been obliterated. In view of this, and in conformity with article 45, title 4, of the Mining Code in force, I formally call your attention, and I protest once and as many times as may be necessary against any acts of that or any other authority that may affect or injure the valuable interests of the North American company of which I am director, and which are placed under the protection and safeguard of the laws in force in the Republic. It is justice that I appeal for in Guanoco, April 25, 1900. (Signed) A. H. Carner, Director."

I so declare it for the purpose of justice, at Caracas, May 11, 1900.

ANDRES J. VIGAS.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *December 26, 1900.*
(Received 11.40 p. m.)

Report from New York Bermudas Lake indicates probable attack on its property by pillagers. Recommend sending small gunboat. No reasonable doubt conspiracy here to deprive this company of lake. Definitive title to portion lake called "Venezuela" mine granted natives; no Americans interested except New York Bermudas, from whom it has been illegally wrested. It seems to be clear case of looting and nullifying vested American interests. Appearance imposing naval force will doubtless bring Venezuelan Government to reason.

LOOMIS.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *December 27, 1900.*
(Received 1.20 p. m.)

Cables from New York Bermudas Lake indicate this company has considerable armed force there.

LOOMIS.

The Secretary of State to Minister Loomis.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 28, 1900.

Urgently request the Government to stay all proceedings with reference to possession of asphalt mines in possession of the New York and Bermudez Company pending investigation of rights of the parties. This in order to avert bloodshed, which should be avoided, as the matter can be peacefully and justly investigated and determined.

HAY.

Mr. Loomis to Mr. Hay.

No. 535, Confidential.] LEGATION OF THE UNITED STATES,
Caracas, December 29, 1900.

SIR: I have kept you advised by cable of the important happenings in the controversy between the New York and Bermudez Company and the Government of Venezuela. Since my dispatch of December 22 there have been no public developments aside from the "accusing" of the remaining portions of the New York and Bermudez Company's pitch lake by Venezuelans.

Under the surface a good deal has been going on. The manager of the New York and Bermudez Company, Mr. A. H. Carner, has informed me very fully respecting a number of interviews which have taken place between himself and representatives who profess to have come to him with the sanction and under the instruction of General Castro. Mr. Carner first, after much beating about the bush, and the employment of intermediaries, was approached by the attorney-general of Venezuela. This official talked rather vaguely in the beginning, but finally stated that he wanted to arrange to bring about a settlement that would be satisfactory to the New York and Bermudez Company. "There is only one man who can do that," said Mr. Carner. "Do you represent him?" After some hesitancy the official admitted that he did and stated that he was empowered to discuss terms. He also volunteered the information that General Castro has a one-third interest in the Venezuela mine, one of the two mines set apart from the Bermudez pitch lake by the Executive decree of December 10. The Venezuela mine is by far the larger of the two mines, and it was given entirely to Venezuelans. No foreigner claims any right or ownership in this property. In the case of the other

mine, La Felicidad, the titles in dispute were granted first to Venezuelans by this Government and subsequently acquired by Americans with full knowledge of the cloud upon them and of the status and claims of the New York and Bermudez Company in the matter.

Yesterday, December 28, Mr. Fabricie Conde, a former minister of finance, and a man who I know has close confidential relations with General Castro, sought an interview with the representative of the New York and Bermudez Company, with whom he is well acquainted. Mr. Code hand previously had a talk with Mr. Carner. Mr. Conde, after pledging the agent of the company to secrecy and particularly cautioning him that under no circumstances was the American minister or the United States Government to be given an inkling of what he had to say, declared that he had come with a definite proposition from General Castro. He said that they were perfectly aware of the great value of the pitch lake which had been taken away from the New York and Bermudez Company; that they had no ill feeling against the company and that they were disposed to help it. "What," said the agent, after considerable fencing, "do you propose?" "Well," said Conde, "I am authorized by General Castro to say that the lake will be restored, and any sort of decree that Mr. Carner wants to confirm his title and rights will be procured by us from the supreme court, which, of course, we control." "What is the consideration that would be expected," was asked of Mr. Conde. "Four hundred thousand dollars," said he. A guaranty that this money would be promptly paid would be required. He also said that in addition to this sum a commission of $50,000 for himself would be expected. He admitted, in closing the interview, that if cash were offered a smaller sum might be agreed to by General Castro. He again warned the agent that nothing could be done about arranging the matter if the American legation was not kept wholly in the dark respecting the proposed settlement. The agent repeated the story to Mr. Carner, who told it to me in detail.

In my mind there is no doubt of the existence of a conspiracy here to "squeeze, plunder, and loot" the New York and Bermudez Asphalt Company. The indications are very numerous and very plain. The impression is widely current that this is an extremely rich corporation and that its pitch lake is enormously valuable. There is a small, well-organized coterie of adventurers here who are always on the lookout for plunder and there are clever men among them. I think the plan to fleece the New York and Bermudez Company originated with them and that they brought others into it who could give it effect.

I do not know what opinion the Department may reach after an examination of the maps and documents and the official record which I have submitted, and I do not desire in any way to influence that decision. I have reported rather fully the happenings here in order that the Department might understand as clearly as possible the inside history of the matter in question. The public record does not tell many things that it is of vital importance to know.

Mr. Conde's offer to obtain, for money, from the supreme court any sort of decree, ruling, verdict, or finding that the New York and Bermudez Company might desire indicates the character and quality of the justice which may be expected if the company were to take the case before the tribunals of the country on its merits.

If an injustice has been done the New York and Bermudez Company by the Venezuelan Government and the company is not protected in its rights and holdings in an emphatic, vigorous way, the result can not fail to be most unfortunate, not only now, but for many years to come.

* * * * * * *

No minister to this country has been or is more disposed to regard it with a higher degree of friendly favor than myself. I have been at pains to speak well and hopefully of it, and have written reports about its natural resources and its business possibilities. My whole course, both in an official and private way, since I came here has been one of active friendliness. Therefore it is with real regret that candor compels me to say that within the last six months I have slowly reached the firm conviction that there is here in official circles a growing tendency to look lightly upon the Government's international responsibilities and obligations. Either this is the case or there is a state of ignorance respecting the duties and responsibilities of an independent government which reaches a magnitude almost incredible.

We see this attitude of indifference and recklessness reflected in the words and deeds of minor officials and in many parts of the country, and by this very mail I am sending reports of an outrage upon two Americans of good standing that serves to illustrate my point.

If the Department is convinced that there is a conspiracy to plunder the New York and Bermudez Company and thinks that it has been treated with gross injustice, I think it will be necessary to demand in a very vigorous manner that the company should be restored to all of its rights and privileges of which it has been deprived, and that this demand should be coupled with a plain intimation that if it is not complied with a gunboat will be sent to place and keep the company in possession, or that the custom-houses of La Guaira and Puerto Cabello will be held till the demands of the United States Government are satisfied. The plain disposition here is to take advantage of the smallness and weakness of Venezuela for the purpose of imposing upon the good nature and infringing upon the rights of more powerful nations. I think this tendency should be sharply checked.

I have, etc., FRANCIS B. LOOMIS.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *January 2, 1901.*
(Received 9.30 a. m.)

Have received advice of serious trouble impending at New York-Bermudez Lake. The Venezuelan Government unnecessarily delaying answer to your urgent request.

LOOMIS.

The Secretary of State to Minister Loomis.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 4, 1901.

Peremptorily demand stay of all executive proceedings with reference to asphalt mines claimed by New York-Bermudez Company and that the company be protected in its peaceful possession until all questions at issue and any conflicting claims can be fully investigated and considered by this Government. You may furnish the Venezuelan Government a paraphrased copy of this cablegram.

HAY.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *January 4, 1901.*
(Received 10 a. m.)

The request of the Department for stay of proceedings, with reference to possession of the asphalt mines held by New York-Bermudez Company, is refused by the Government of Venezuela.

LOOMIS.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *January 11, 1901,*
(Received 9.20 a. m.).

Referring to the peremptory demand of the Department for a stay of proceedings in the New York Bermudez case, the Government of Venezuela repeats its former refusals, declaring that, all action having been in accordance with the laws, Chief Executive sees no way of interfering or providing for investigation save in the tribunals. Refusal of Venezuela covers both points in your demand.

LOOMIS.

The Acting Secretary of State to Minister Loomis.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 12, 1901.

The Government of the United States solemnly protests against any proceedings by the Venezuelan Government to dispossess American citizens of their property without due process of law, as it is informed may be done in the case of the New York Bermudez Company in respect of asphalt mines claimed by it, and in the event of a denial of justice this Government reserves the right to review the grounds of dispossession. You may furnish a paraphrased copy of this instruction to the Venezuelan Government.

Acknowledge receipt immediately.

HILL, *Acting.*

Mr. Loomis to Mr. Hay.

No. 539.] LEGATION OF THE UNITED STATES,
Caracas, January 13, 1901.

SIR: I inclose herewith correspondence with the Venezuelan Government in reference to your cable reading:

Urgently request the Venezuelan Government to stay all proceedings with reference to possession of asphalt mines in possession of the New York and Bermudez Company pending investigation of rights of the parties—this in order to avert bloodshed, which should be avoided, as the matter can be peacefully and justly investigated and determined.

I sent the inclosed note to the minister of foreign affairs (inclosure 1) a few minutes after receiving your cable of the 29th of December and followed it with a verbal request for a prompt answer. I renewed this request on Monday verbally, as well as in writing, as will be seen from inclosure 3. The note from the foreign office (inclosure) was answered immediately.

The definite answer to the Department's request was received about 6 o'clock Thursday evening. The next morning I went to the foreign office at 9 o'clock and had a long talk with the minister and suggested the advisability of a reconsideration of his note of the day before in response to your cabled request respecting possession of the New York and Bermudez Asphalt Company's mines. I urged this on the ground of justice and fairness to all parties and upon the further ground of courtesy toward a friendly Government which had in many ways manifested its kindly interest in Venezuela.

I stated with as much emphasis as possible that to grant the stay of proceedings desired would in all probability result in an amicable arrangement being arrived at which would give satisfaction to all those concerned in the matter. The minister said his Government could not grant a stay; that it was not competent for it to do so, and that the whole case could be referred to the courts here if any further proceedings or disposition of the matter were desirable.

I made a long, earnest, and courteous appeal to the minister of foreign affairs for the sake of obtaining a reconsideration of his Government's refusal to grant the Department's request, but my well-meant effort was wholly useless. The minister would not recede in the least from the position that his Government was wholly right and that it could do nothing further in the matter of the request for a stay of proceedings, and my suggestion of complying with your request on the ground of courtesy between friendly nations was equally ineffective.

I told the minister that I had heard his final decision with grave regret, for I was sure that my Government was deeply interested in seeing this matter definitely settled in a manner fair and just to all parties concerned, and that a reasonable amount of time in which to become acquainted with the facts and legal record was essential.

Confidential.

I should observe in this connection that the difficulty which the New York and Bermudez Company is having at this time probably is not because it is an American corporation, but, so far as I can see now, it is because its property holdings here suggest large possibilities for profit to certain adventurous and not overscrupulous spirits who are always on the alert for plunder. The fact that the company is

American is merely an incident. Two or three important American enterprises have been hard pressed of late, notably the Orinoco Company (Limited) and the American shareholders of the Orinoco Shipping and Trading Company, and it looked for a time like a preconcerted assault on American interests, but I do not think the question of nationality per se entered largely into the question so far as this Government was concerned. Opportunities were seen and seized, and the victims happened to be Americans. I think as a question of mere sentiment the Government is as friendly to Americans as to other foreigners, perhaps more so as a question of sentiment, but in these financial matters there are other motives more potent than those of a sentimental character.

I have, etc., FRANCIS B. LOOMIS.

Mr. Loomis to Minister of Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, December 29, 1900.

MR. MINISTER: Referring to the matter of the New York and Bermudez Asphalt Company and the Executive decree of December 10 in respect to it, I have the honor to inform your excellency that I am instructed by my Government to "urgently request" the Venezuelan Government to stay all proceedings calculated to deprive the New York and Bermudez Company of the possession of the asphalt mines or lake now actually held by this company until the rights of the parties can be further investigated.

This urgent request is preferred by my Government in the interest of fairness and justice to all concerned and for the further aim of obviating any difficulties or contentions which might result in bloodshed. It is confidently believed that the matter can be peacefully and pleasantly adjusted if only time for due consideration and investigation of all the points at issue be accorded by your excellency's Government.

I take, etc.,

FRANCIS B. LOOMIS.

Minister of Foreign Affairs to Mr. Loomis.

[Translation.]

MINISTRY OF FOREIGN AFFAIRS,
UNITED STATES OF VENEZUELA,
Caracas, December 29, 1900.

MR. MINISTER: I have just received your excellency's note of even date herewith, in regard to the request your legation has been instructed to make in behalf of the New York and Bermudez Company. Before considering the points in your note, the Supreme Chief desires that your excellency will please explain what is meant by the word "bloodshed" contained in the note to which I refer.

I appeal to the courtesy of your excellency to obtain the desired explanation, and in the meanwhile reiterate to you the assurances, etc.

EDUARDO BLANCO.

Mr. Loomis to Minister of Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, December 31, 1900.

MR. MINISTER: I am in receipt of your excellency's note of December 29 in reference to the request of the United States Government in the matter of the New York and Bermudez Company. The word "bloodshed" about which inquiry is made doubtless refers to any disorder that might occur on or about the holdings of the New York and Bermudez Company in the event of rival interests coming into conflict, and hasty action ensuing upon the part of unthinking persons. It has been reported that attempts to destroy the property of the New York and Bermudez Company have been threatened of late.

I will esteem it a favor if your excellency will kindly communicate an answer to my note of December 29, in order that I may promptly forward it to my Government.

I take, etc.,

FRANCIS B. LOOMIS.

Minister of Foreign Affairs to Mr. Loomis.

[Translation.]

MINISTRY OF FOREIGN AFFAIRS,
UNITED STATES OF VENEZUELA,
Caracas, January 3, 1900.

MR. MINISTER: At a cabinet meeting yesterday the supreme chief of the Republic presented for especial consideration your excellency's note of the 29th of last month, and also your note dated December 31, explanatory of certain phrases contained in your communication of the 29th. The supreme chief thought that the request of the Government of the United States should be immediately considered, as such consideration would not controvert the ends of justice; but he also thinks that there is no reason for making the request.

By no act of the Executive could any one be dispossessed of genuinely vested rights, as executive rights are prescribed by laws which always look to the safeguard of legitimate interests and to the absolute security of general and individual rights. In the case of the New York and Bermudez Company the Government could never issue any decree that was not absolutely in accord with the faculties given to the Chief Executive by the constitution. If there has been a seeming injury in the application of the law, there is open the same recourse as in every civilized country in the world, viz, an appeal to the courts.

On the 20th of last October I had occasion to emphatically say to Mr. Russell touching this case, that the Executive could do nothing in the affair except as prescribed by the law. All action in this case having been in accordance with the law, it is impossible to act at variance with said law. Consequently the Supreme Chief sees no way to interfere in this affair nor to adopt any measure for investigating the rights referred to in the note from your legation on the subject. This was the decision of the cabinet yesterday in regard to your note of December 29.

As to the fears expressed by your excellency in your explanatory note of the 31st instant, the Government thinks it is entirely competent to prevent or suppress all disturbances and competent also to dictate measures looking to the preservation of order in those places where there could be trouble.

Accept, etc.,

EDUARDO BLANCO.

Mr. Loomis to Mr. Hay.

No. 545.] LEGATION OF THE UNITED STATES,
Caracas, January 13, 1901.

SIR: I have the honor to inclose further correspondence in the New York and Bermudez Asphalt Company case.

I transmit herewith my note conveying the Department's cable instructions "peremptorily to demand" a stay of all executive proceedings in the New York and Bermudez Company asphalt matter, and the protection of said company in its peaceful possession of the property.

I received this instruction by cable Friday night, January 4, and on Monday morning I called at the foreign office at half past 9 and read the inclosed note (inclosure No. 1) to Dr. Eduardo Blanco, minister of foreign affairs, and explained the grave and earnest character of the communication, and observed that he must see that my Government firmly insisted upon being given adequate time in which to examine into the facts and claims that have come before it. I said that a reasonable amount of time was all that was asked for, and that

the Venezuelan Government was not now requested to do anything that would affect the final decision or the determination of the merits of the case other than to give a friendly power opportunity to investigate. I pointed out also that General Castro had ample power to grant this request, as he was in the exercise of dictatorial authority.

I asked the minister to kindly impress upon General Castro the modest and reasonable import of the desire of my Government and the emphatic and insistent form of the demand. The minister said that he would do this and that he fully understood that I had presented a vigorous and emphatic demand. He talked copiously of large and powerful nations oppressing small and weak ones, and wondered what we would do if one of the great powers were in the place of Venezuela. I answered that he only had to go back to the boundary episode with England to find an answer to that query.

I also inclose the answer of the Venezuelan Government to my note of January 5 (inclosure 2). I have not been able to get a translation of this note in time for the mail, and so send a copy of the original. It will be seen that this note is largely a repetition of the note of the Venezuelan Government dated January 3, written in answer to my note conveying your urgent request for stay of proceedings in the asphalt case.

I called on the minister after reading his note (inclosure 2) for a further talk. I said his answer to my note was in the nature of a sore disappointment and that I had fully expected his Government would find some way to enable it to accede to the thrice preferred, courteous, and wholly reasonable request of the United States Government. Again I asked him if General Castro quite understood the positive and emphatic nature of the demand set forth in my note. He said they understood fully that it was an emphatic demand of the strongest nature and not a request, and that they had made their decision and would stand by it. I suggested that the Government of the United States ought to be entitled to expect particularly courteous treatment from the Government of Venezuela. "Well," said the minister, "we are not doing anything here." "Everything that is being done is being done in Washington. We can not change what has been done officially. The Executive decree of December 10, 1900, was issued in answer to a petition of the agent of the New York and Bermudez Asphalt Company praying for the annulment of the titles to the mines La Felicidad and Venezuela, and that, having sent commissions to examine into the facts, the Government was constrained, in view of the reports of these commissions, to deny the petition. If further action here is desired let the parties who want it go to our courts." I remarked that it was not a question at present between parties or individuals, but between governments. He also said that the carelessness, inefficiency, and stupidity of the local attorneys of the New York and Bermudez Company was in a large degree responsible for the present situation, and in the latter observation he is not wholly wrong.

Confidential.

I found that nothing was to be gained by prolonging the interview and so withdrew satisfied that I had done all that I could to arrange the matter pleasantly and to obviate any serious difficulties and misunderstandings. The Venezuelan Government is counting upon the well-known disinclination on the part of more powerful nations

to assert themselves where a weaker nation is the adversary, and that, I think, is the reason, coupled with personal considerations about which I have written, that due heed and proper respect have not been given to the Department's requests and demands.

I feel constrained to repeat what I said in a former dispatch about the manner in which this Government seems to regard its international duties and responsibilities. If it is now felt and believed that the just demands of the United States Government may be lightly defied, I fear the situation for all foreign representatives and citizens will become a very difficult one.

I have, etc., FRANCIS B. LOOMIS.

Mr. Loomis to Minister of Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, January 5, 1901.

MR. MINISTER: I am again constrained by the development of events to recur to the topic which has of late very frequently been the subject and occasion of friendly communication and of official intercourse between your excellency and myself. I refer to the Executive decree of December 10, 1900, by means of which the Government of Venezuela, in effect, set aside certain very valuable portions of the asphalt lake in the former State of Bermudez, which lake in its entirety, together with the exclusive right to mine asphalt in the aforementioned State, is claimed by the New York and Bermudez Company, a responsible American corporation.

The New York and Bermudez Company, which formally complains that it has been deprived unjustly of properties of great value and importance, has been engaged in business in Venezuela for more than a dozen years, and, according to an official decree promulgated by the minister of fomento on the 23d of July, 1900, has, in every way, complied with the laws and with the terms of its contract with the Venezuelan Government.

Divers representations having been made to the Government of the United States by certain of its citizens interested in the operation and effects of the decree of December 10, 1900, I have been twice instructed by cable courteously to convey to your excellency's Government an urgent request that the Government of the United States be given reasonable time and opportunity to investigate fully the questions under discussion to the end that a harmonious and satisfactory understanding among all of the interested parties might be reached. I had the honor to request that the operation of the Executive decree of December 10, 1900, be suspended and that proceedings looking to a change of possession of the asphalt mines and property mentioned in the decree be arrested pending the suggested inquiry. Another object of the requests preferred by me, under instructions from Washington, was the averting of possible disorder or violence, upon the property occupied by the New York and Bermudez Asphalt Company, which it was thought might follow some hasty attempt to secure possession on the part of employees of new claimants prior to a final and official determination of the boundaries and limits of the disputed properties. These petitions were denied.

The requests of the Government of the United States in this matter having been made in the interest of good will and harmony and absolute fairness to all concerned, due regard for these high, important, and grave considerations now leads my Government to insist that its reasonable desire for sufficient time in which adequately to inquire into these questions at issue, which seem to affect so seriously the rights and interests of some of its citizens, be entertained. Therefore, I am instructed to say to your excellency that the Government of the United States not only heartily desires and firmly expects a stay of all executive proceedings with reference to the asphalt mines claimed by the New York and Bermudez Asphalt Company, but it also fully expects the Venezuelan Government to protect the company in its peaceful possession of the properties herein referred to until all questions at issue and all conflicting claims can be fully investigated.

I am instructed to present this request in a vigorously earnest manner and to insist positively upon its early and favorable consideration.

I take, etc., FRANCIS B. LOOMIS.

Minister of Foreign Affairs to Mr. Loomis.

[Translation.]

MINISTRY OF FOREIGN RELATIONS OF THE
UNITED STATES OF VENEZUELA,
Caracas, January 10, 1901.

MR. MINISTER: In reply to your excellency's note of the 5th instant, I again refer to the case of the so-called New York and Bermudez Company, under the same impression of surprise that I experienced in consequence of Mr. Russell's request, which brought the case into a sphere which is as foreign to it as is the sphere of diplomacy. That impression has now been increased in the mind of the Chief Magistrate by the insistence and, to a certain extent, pressing way in which your excellency expresses, in your last note, a desire that the Venezuelan Government will take, in behalf of certain determinate interests, a course of action which it has no power to take, since the matter in question is one in which points or particulars are concerned the ventilation of which is incumbent upon the interested parties, according to the laws and procedure of the civil laws of Venezuela on the subject.

Although you claim that it is necessary for the Executive to intervene in some way in the settlement of the matters connected with the aforesaid company, the Chief Magistrate can not see his way clear to doing this without taking upon himself functions in legal matters for which the codes of the Republic make ample provision. If, whenever an individual or corporation thought that some legal principle was violated to his or its detriment, such individual or corporation were to apply to the Executive to define the point, without paying any regard to the provisions of the civil code, the laws governing the general interest would be superfluous, and even the courts would not even be the mere interpreters of the essential rules on which the life of law rests.

The company to which your excellency refers might have cause for complaint if it found barred in anywise the way to the elucidation of the points which it considers favorable to its allegation; but, since the courts of justice offer here, as they do in every enlightened country, a full guaranty of impartiality, it is impossible to understand the reason for insisting that the Executive shall interfere in the matter, nor can the earnestness be understood with which it is asked that the rules of domestic legislation shall be set aside as the only means of securing what the applicants or interested parties think is their due. Your excellency is aware that there is no legitimate title whose validity can be impaired by means of a juridical disquisition made by the bodies whose duty it is, according to law, to make it.

To claim, on the other hand, that a branch of the Government whose powers are known should assume others by reason of circumstances alleged, and to compel it to modify some act ordered in the exercise of such known powers, would be equivalent to diminishing the force of a country's domestic laws, to the detriment of its national sovereignty.

In the note of your honorable legation it is stated that the requests made of Venezuela in connection with this case are designed simply to secure harmony and absolute fairness to all concerned; this view is very laudable, and entirely in accord with the only attitude which it is now proper for this Government to assume in the premises, since otherwise the course of the law would be obstructed, which course it would be impossible to follow if the Executive should interrupt, by extending partial protection, the proceedings consequent upon the state of things itself.

I am consequently compelled once more to inform your excellency that it is impossible to consider the request made in any sense different from that which prompted the reply that I had the honor to address to you under date of the 3d instant.

Accept, your excellency, a renewed assurance of my highest and most distinguished consideration.

EDUARDO BLANCO.

Mr. Loomis to Mr. Hay.

No. 546. LEGATION OF THE UNITED STATES,
Caracas, January 13, 1901.

SIR: I inclose an article, with translation of same, which appeared in a local daily paper. I send this article for the reason that it was written by the attorney of the owners of La Felicidad and presents something of their side of the general controversy with the New York and Bermudez Asphalt Company.

I find that the bitterness with which this fight has been conducted has led certain representatives of both sides to make extravagant statements that are not always supported and warranted by the facts; indeed, there are times when truth and the facts seem quite to have been lost sight of.

I have, etc., FRANCIS B. LOOMIS.

[Translation.]

NEUTRAL SECTION—OPPORTUNE EXPLANATIONS—"FELICIDAD."

As all the former articles on this subject have been long, I will try to make this my last. Mr. German Jimenez, in an article published in this paper, explains why he ran the northern boundary line of the Bermudez concession in spite of the fact that said northern boundary was not in conformity to the mining titles of said company. To reply to Doctor Jimenez, it is sufficient to say that the commission was composed of three engineers, and that the other two members, Dr. Jesus Muñoz Tebar and Dr. Luis Julio Blanco, in possession as well as Jimenez of all the documents referring to the disputed properties, did not think that they could adopt the line that Jimenez himself was establishing. Doctor Jimenez says that his judgment in regard to the titles is corroborated by the opinion of competent engineers. That opinion I would respect were the question at issue one of distances or running railroad lines, but as to titles lawyers and judges are the persons called upon to decide in case of dispute.

Furthermore, those answers given with too much assurance can be very readily rejected without jeopardizing the high opinion which is had of the one who gave them. If I had presented the question, I hold that the answer would have been very different.

According to the titles and plans in the ministry of fomento, it is proven that the two concessions of Felicidad and Bermudez are very far apart. Doctor Jimenez himself admits this, and the difference of distance is so great that there is nothing to lead one to even suspect that there could be any discussion on this point. As rights are derived from titles, the consequence is that if Felicidad is in accordance with its deed, then it does not collide with the rights of Bermudez. Against the opinion of these engineers consulted by Doctor Jimenez I can place the opinion of a distinguished Venezuelan lawyer who studied this matter long before I did and who, like myself, was convinced of the rights of Felicidad. Mr. Sullivan has this opinion in writing.

Doctor Jimenez, being convinced of the fact that the titles of the New York and Bermudez do not agree with the mine that they are working, attempts to load the responsibility upon the Government of Venezuela for the reason that Orsi de Mombello, technical inspector of mines, made the plans. This is an error. Mines are obtained by accusation, and Mombello did not make the accusation; the accusation for the mine, as well as for the vacant lands, was made by the New York and Bermudez Company. The technical inspector of mines is employed by the Government to keep it informed, not to establish rights of others; the Government never guarantees titles. It would be very easy, but long and tedious, to prove that the Government has no responsibility in regard to the titles of the Bermudez Company. But this is foreign to the issue.

Doctor Jimenez says that Felicidad is also not in conformity to its plan, but the slight difference that exists is of no consequence, as Felicidad is wholly in accordance with the boundaries given to it in its deed.

The title to Felicidad has been in existence for three years, and the mine has been in the possession of Mr. Mateo Guerra Marcano and others who acquired it. During all this time and neither before nor since the granting of the title has there been any legal opposition on the part of the Bermudez Company. Last July only the Bermudez Company petitioned the ministry to annul that title.

Why so much commotion here? Why such a tumult in the United States where false reports have been circulated? The Government has merely rejected the unlawful pretension of the Bermudez Company. If the Bermudez Company thinks it has any right to Felicidad why in all this time has it not brought action against the owners?

NICOMEDES ZULOAGA.

P. S.—Dr. Tomas Llamozas has made new explanations in the press.

The participation of Doctor Llamozas in the affair of Bermudez and Felicidad was an incident without consequence, for when his plan and report were justly rejected

by the lawyer for Felicidad a commission was sent to make and did make new plans. Consequently I have nothing to say in reply to Doctor Llamozas except that he is gravely in error when he asserts that Mr. Sullivan appointed General Peraza to present his arguments and claims. This is absolutely contrary to the facts, for Mr. Sullivan told General Peraza that he would not accept him, and this is proven explicitly in a letter from General Peraza about the time of the departure of Doctor Llamozas.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *January 16, 1901.*
(Received 3.25 p. m.)

Venezuelan Government has declined to entertain protest of the Department, as it did the urgent request and peremptory demand. Referring to your instructions telegraphed January 12, the Venezuelan Government says protest can not be considered if it refer to the action taken by the Venezuelan Government in the matter. But though it alludes to denial of justice, it (does so) in a mere hypothetical sense, and Government of Venezuela does not look with great concern upon the ultimate result, having great confidence in Venezuelan tribunals. I think the departure of the *Hartford* and *Buffalo*, at the moment I presented your peremptory demand, unfortunate.

LOOMIS.

The Secretary of State to Minister Loomis.

No. 384.] DEPARTMENT OF STATE,
Washington, January 21, 1901.

SIR: You are instructed to ascertain in a reliable way and report to the Department whether the Warner-Quinlan Company have adequate remedies in the courts to assert and maintain their legal right and title, if they have any, to the asphalt mine against the New York and Bermudez Company. It is represented by them to the Department that they have no remedy before the courts to establish their claim of title as against the New York and Bermudez Company.

In the opinion of the Department it is highly proper for the opposite parties to have their rights determined judicially if this can be done, but neither party appears to be willing to resort to the courts.

In the United States a party claiming title to property in the possession of another has ample judicial remedies.

I am, etc., JOHN HAY.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *January 26, 1901.*
(Received 11.01 a. m.)

I have to suggest *Scorpion* should call at pitch lake. That part of the country is overrun with revolutionists. Am informed that there are American families in some danger, as well as valuable

property of American citizens. Venezuelan Government unable to guarantee protection. Understand that *Scorpion* has been ordered to Orinoco iron mines. So far as is known here, there is no necessity for any war vessel there. I think no American citizens there; no property that can be pillaged.

LOOMIS.

Mr. Loomis to Mr. Hay.

No. 552.] LEGATION OF THE UNITED STATES,
Caracas, January 26, 1901.

SIR: I have been a good deal annoyed and disappointed at the persistent refusal of the Venezuelan Government to grant the Department's request for a stay of proceedings pending your thorough investigation of the asphalt mines in dispute and the claims of the New York and Bermudez Company. It is unusual for this Government to decline to consider requests preferred by the United States minister, under instructions from his Government, and it occurred to me that possibly the matter had not been made sufficiently plain to General Castro in all of its bearings, and that the reasonable nature of the Department's request had not been clearly explained to him by the foreign office. Therefore I had a long interview with him yesterday afternoon for the purpose of ascertaining what his personal views were. I stated that possibly we had failed to make our meaning distinct in the written communications which had reached him through the regular official channels, and said I wanted to have a friendly, private talk for the purpose of clearing away misunderstandings, if any existed. I referred to the extremely cordial relations that had existed between the Venezuelan Presidents and myself since I first came to this country, and more particularly to the active friendly interest the United States had manifested in the welfare of Venezuela. I spoke of the commerce between the two countries and referred to the fact that the United States bought more than one-half of all that Venezuela had to sell, and that it also admitted Venezuelan coffee free of duty. General Castro said he understood the United States was friendly to Venezuela and that his country owed much to its kindly and frequently manifested good will. "Then," said I, "is it worth while to let small things block the way to a continuation of that pleasant, useful friendship? I gather that my Government is perhaps not overpleased with the course of the Venezuelan Government in declining to entertain its courteous and repeated requests for a stay of proceedings, and time to investigate the facts and legal points involved in the controversy over the titles to the pitch lake and asphalt mines claimed and actually occupied by the New York and Bermudez Asphalt Company. The request for time is a reasonable one under the circumstances, and in no sense is an unusual one. The United States, as I understand it, only asks your Government to suspend the operation of its decree of December 10 for a short time, and to leave the New York and Bermudez Company in the peaceful possession of its property pending the investigation now under way. If you were simply to indicate that the status quo would be preserved for a few weeks, and that no steps would be taken, I have no doubt that would be construed as a satisfactory answer to the requests that have been made."

"I would like to meet the wishes of the United States Government in this matter, but I can not do so," said General Castro. "I have simply followed and obeyed the law as it is set forth in the mining code now in force. I can not suspend the operation of the decree. It is the fault of the New York and Bermudez Company that the decree was issued. This company filed a petition in respect to the titles of the mines and we answered it by issuing the decree."

"Yes;" said I, "but it is perfectly competent for the authority that issues a decree to temporarily suspend its operation. I know of many cases in which this has been done. And what is more, no formal action need be taken. You could arrange the whole matter in a private and quiet way. Of that I am certain. A word to three or four people and matters would remain as they are and no harm done, or injustice to anyone. Then my Government would doubtless feel that its earnest and courteous request had been met in a cordial and wholly agreeable manner. This is something that can be arranged, and I think that it must be understood at Washington that you have ample power to so arrange it."

"Oh, no; I could not possibly do anything in the matter," said General Castro. "The New York and Bermudez Company might take the matter to the Venezuelan courts and there obtain a stay of proceedings. I think they could do this, but I am not certain as I am not a lawyer. I am proceeding according to law, however, and within the limitations of the constitution. I do not see that I am given power to meet in any way the request of the United States Government. If the owners of the mines that have been set aside from the pitch lake claimed by the New York and Bermudez Company have their titles, as they must have, they can take physical possession very shortly or at once, for that matter. There is nothing to prevent or hinder them. I am sure the United States Government, when it finishes its investigation, will find that I am right about these matters. I am upholding the constitution. That is the source of my strength. I declared the constitution in force shortly after I came to Caracas."

I made answer that I regretted very heartily that, understanding the moderate nature of the request of my Government, he could not see his way clear to arrange to meet it in the friendly spirit in which it had been preferred. I also remarked that his power was undisputed in Venezuela and, while I would not suggest, much less urge him to do an unlawful or unconstitutional act, I still felt sure that he could devise some plan to comply with the earnest wishes of a friendly Government which would at once be satisfactory to that Government, and do no violence to the laws or the constitution of Venezuela. I further observed that I would take leave of him in the hope that he would give the matter further consideration. But he added as I left, "What you suggest is impossible. Nothing further will be done. I am sorry, but that is my decision."

[Confidential.]

So the interview closed. The Government of Venezuela is determined to pursue the course it has taken, and I am satisfied that no friendly or ordinary means will suffice to shake its determination. The talk about the constitution is bosh. It is used as a convenience. When either it or the law can be quoted to advantage they are

brought forward and referred to with a good imitation of solemn pride. When the constitution stands in the way of any course the Government desires to pursue, it is remorselessly and regularly ignored. This is not a constitutional government. General Castro is a dictator, and does pretty much as he pleases. This has been demonstrated, as the Department well knows, over and over again, and will continue to be so demonstrated as long as he is dictator. Were this a constitutional government, earnestly striving to uphold and follow the laws and the constitution, I should have patience and sympathy with the remarks to which I listened for half an hour and more about the sacredness of the fundamental law of Venezuela; but, in consideration of the facts that actually exist, and the situation which the country daily faces, I can only think of them as an insult to one's intelligence.

General Castro has, it appears, made up his mind to give no heed whatsoever to the wishes of the United States Government in this matter. There is reason to think that insistence upon the Department's request (it was made substantially four times by me in a formal way) only causes certain persons here to place a higher valuation upon the asphalt property and makes them think they may reasonably expect greater profits from the sale of the mines in dispute. Mr. Fabricio Conde, referred to in my dispatch numbered 528 as having tried to negotiate the sale of the mine Venezuela on the part of certain very important personages in Caracas, is now in New York, and I know that one part of his business is to sell the mine Venezuela. Of course no sale can be made of this valuable property until possession can be guaranteed with reasonable certainty.

It is extremely probable that just as soon as the revolutionary uprising in the eastern part of the country has been checked troops will be sent to dispossess the New York and Bermudez Company. I think the impression grows that this Government's tenure is limited and that no opportunities will be allowed to go by unimproved.

During my interview with General Castro I asked him if, in the disturbed state of the country in the general vicinity of the pitch lake occupied by the New York and Bermudez Company, he could guarantee that the plant of the company would be protected from attack and destruction. He said that the revolutionists might invade the place and do damage to the property, but if that should happen and the property of the company were to be destroyed, it could file a claim against the Venezuelan Government. So it will be seen that this Government can not be counted upon to protect investments of American citizens in the eastern part of Venezuela.

I have, etc.,

FRANCIS B. LOOMIS.

Mr. Loomis to Mr. Hay.

No. 555, Confidential.]

LEGATION OF THE UNITED STATES,
Caracas, January 26, 1901.

SIR: I cabled you to-day suggesting that the *Scorpion* be sent up the San Juan River to look in upon the pitch lake claimed by the New York and Bermudez Company. I did this because the managing

director of the company, Mr. A. H. Carner, called at the legation and showed me cablegrams from a very responsible party in Trinidad who had just returned from the lake and who said the situation was growing more serious there; that the country was full of revolutionists; that the negro workmen had been frightened away, and in short, that there was no adequate protection for the several Americans and their families living at the lake; to say nothing of the safety of the plant, railroad wharf, and other property of the company.

It seems to me well that the gunboat should be seen there to report on actual conditions. The *Scorpion* was ordered to go to the lake a fortnight ago, but owing to a justifiable misunderstanding of the orders she remained at La Guaira until Thursday of this week, when she went to Curacao for coal. I learn from Curacao that she has been ordered to go to the Imataca or Manoa iron mines, about 75 miles above the mouth of the Orinoco River. The president of the Orinoco Iron Company, Mr. A. B. Roeder, wrote me from New York by the last mail that he expected to have a naval vessel sent to the mines. The commander of the *Scorpion* also told me that he had received written orders to proceed to these mines, but the written orders were afterwards canceled by cable, and it now seems after he reached Curacao they were revived.

The Orinoco Iron Company does not possess the mines in question. It never owned them, but held them for a very short time under a lease from the Orinoco Company (Limited), a corporation whose concession for exploiting many million acres of land was recently anulled, wrongfully, I think, by the Venezuelan Government.

Last summer the Orinoco Iron Company was dispossessed by due process of law, and George Turnbull, an American citizen, put into actual possession of the mines. He is now in possession. The Orinoco Company, which has no property and no assets, so far as is known here, never worked these mines except to extract one sample cargo of less than 1,000 tons of ore. Indeed, the mines have never been worked at all for commercial purposes. They are thought to be very valuable and have been almost continuously in litigation for ten years. I visited these mines when I went up the Orinoco River on the U. S. S. *Wilmington*. There is no property there of consequence—that is, portable—and only a few cheap buildings. There are no Americans there that I know of, though there may be one or two men employed as watchmen by Mr. Turnbull. There is no town within 75 miles of these mines of the slightest importance. The mines are in the heart of a tropical jungle. Therefore I can not imagine why a war ship should be sent there. There is nothing to protect and no one to influence by means of a naval demonstration.

So far as I know there are only two places at present in Venezuela where our war vessels can be of service. One point is La Guaira, the other is the San Juan River in the vicinity of the asphalt mines and in that part of the country which is the center of the revolution.

I have, etc.,

FRANCIS B. LOOMIS.

Mr. Loomis to Mr. Hay.

No. 556.] LEGATION OF THE UNITED STATES,
Caracas, January 26, 1901.

SIR: I inclose herewith the answer of the Venezuelan Government to my note containing a paraphrased copy of your cabled protest in respect to the action of the Venezuelan Government in the matter of the New York and Bermudez Asphalt Company.

I inclose a copy of my note to the minister of foreign affairs.

So little heed had been given to my previous communications and so little respect for the reasonable wishes of the United States evinced that I thought it well to make the note as plain as your instructions would seem to warrant.

I have, etc., FRANCIS B. LOOMIS.

Mr. Loomis to Minister of Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, January 14, 1901.

Mr. MINISTER: I have the honor to inform you that I have been instructed by the Secretary of State of the United States to communicate to you the following telegram:

"Learning with regret of the decision of the Venezuelan Government in respect to the urgent and emphatic representations recently made to it by our minister in Caracas, the Government of the United States hereby solemnly and formally protests against any proceedings on the part of the Venezuelan Government having for their end or object the dispossession of American citizens of their property without due and regular process of law, as it is understood has been done in the case of the New York and Bermudez Company and the asphalt mines claimed by that corporation.

"In the event of any denial of justice whatsoever the Government of the United States reserves to itself the right to review the proceedings and processes by means of which such denial was accomplished."

I trust your excellency's Government will receive this communication in the spirit in which it is sent and that the note of caution which it conveys will be earnestly considered.

I take, etc., FRANCIS B. LOOMIS.

Minister of Foreign Affairs to Mr. Loomis.

[Translation.]

MINISTRY OF FOREIGN AFFAIRS.
UNITED STATES OF VENEZUELA,
Caracas, January 15, 1901.

Mr. MINISTER: At yesterday's cabinet meeting the Supreme Chief of the Republic had taken up for especial consideration your excellency's note written in accordance with telegraphic instructions from your Government, and which treats of affairs in which the New York and Bermudez Company is interested.

The protest contained in your note can not now be considered if it refers to the action which the Government has taken in the matter, as such action has been strictly in accordance with law. But as the telegram speaks of an eventual denial of justice, which presupposes judicial proceedings to determine alleged rights, the protest is viewed in a mere hypothetical sense, and the Government of the Republic does not look with grave concern upon the ultimate results, as it has perfect confidence in the probity of the magistrates charged with the administration of justice in Venezuela.

The Government of the United States, with due regard in this case, as in all cases, to the principles of international law, can not prejudge the question under consideration, but must wait until the proper courts have taken up the matter in accordance with the prescriptions of the Code.

I take, etc., EDUARDO BLANCO.

The Secretary of State to Minister Loomis.

No. 387.] DEPARTMENT OF STATE,
Washington, January 28, 1901.

SIR: I have to acknowledge the receipt of your Nos. 539, 545, and 546, of the 13th instant, relative to the case of the New York and Bermudez Company.

It is evident from the contents of your No. 546 that in the treatment of the asphalt controversy caution should be exercised against undue reliance upon the mere statements and representations of either of the interested parties in this controversy.

While your dispatches would seem to indicate a disposition on the part of the Venezuelan Government to lend support by merely executive action to the parties claiming the asphalt mine in opposition to the New York and Bermudez Company, and while in reliance upon the facts as reported in your dispatches, that the New York and Bermudez Company has been in possession of the property under a claim of title during the last twelve years and that their dispossession was contemplated by arbitrary executive action, the Government of the United States has protested against such arbitrary determination of the rights of the parties, it has never been its purpose to interfere for the purpose of preventing the parties from resort to the local courts for the judicial determination of their rights. On the contrary the attitude of the Department has been and is that inasmuch as the controversy involved the title to land including a disputed boundary question, the courts are the only proper forum for the discussion of the questions involved. The Government of the United States can not attempt to decide those essentially juridical questions by an Executive decision, and it would regret to witness any such attempted determination of the questions by the Executive of Venezuela.

Judging from the contents of the note of the minister of foreign relations, dated the 10th instant, inclosed with your No. 545, the Venezuelan Government seems to be under some misapprehension as to the real attitude of this Government.

The impression conveyed in the said note that this Government claims "That it is necessary for the Executive to intervene in some way in the settlement of the matters connected" with the claim of either of the adverse parties is an unfortunate misconception of the attitude of this Government. On the contrary, the Government of the United States is in entire accord with the view expressed in said note, that the Executive may not properly intervene in support of the claim of either party, but should leave the parties to their remedies before the courts.

In the light of the views expressed by the minister in said note, the Department is better able to interpret the note of the minister dated the 3d instant, inclosed in your No. 539.

The Government of the United States is animated by the most friendly feelings toward the Government of Venezuela, with whom it desires to cultivate and strengthen the harmonious relations existing between them. It was strongly represented to this Government that the New York and Bermudez Company has been in possession of the property in controversy under claim of title during the past twelve years; that it has expended large sums of money

in constructing a plant, refineries, docks, warehouses, a railroad, etc., and that it was threatened with forcible dispossession by mere Executive action and without judicial determination of the rights of the parties. If the facts were as represented, the Government of the United States felt and still holds that the company in possession was entitled to protection against such arbitrary action. But the Department is happy to be assured by the said note of January 10 that no such action is contemplated and to know that both Governments agree in the opinion that the questions in issue between the adverse parties are for the determination of the local courts in the first instance.

You will communicate these views to the Venezuelan Government.

I am, etc.,

JOHN HAY.

Mr. Loomis to Secretary of State.

[Telegram.]

CARACAS, *January 31, 1901.*
(Received 1.45 p. m.)

The Venezuelan Government has gained important, perhaps decisive, victory near Carupano, and reoccupied city. The Venezuelan Government thinks victory may end revolution. French Government has sent a cruiser to Carupano to relieve the *Suchet.* Local Government officials have made formal demand upon New York-Bermudez people at Pitch Lake to surrender their arms and ammunition. Caracas Government informed the agent of this company it will not interfere with actions of local officials. Trinidad papers report a battle near Lacuevas recently. The Venezuelan Government lost 250 troops; insurgents a considerable number as well.

LOOMIS.

The Acting Secretary of State to Mr. Loomis.

No. 390.] DEPARTMENT OF STATE,
Washington, February 8, 1901.

SIR: I have to acknowledge the receipt of your No. 552 of the 26th ultimo, reporting your interview with the President of Venezuela on the subject of the claims of the New York and Bermudez Company.

In reply I have to say that the Department will not undertake to judge of the motives of action of the Venezuelan Executive, nor is it disposed to alter the attitude stated by it in its last instruction, No. 387 of the 28th ultimo, especially in view of the statement made in the note of the foreign minister inclosed in your No. 539 of January 13, in which the assurance was given that the Government of Venezuela feels entirely competent to prevent or suppress all disturbances and to dictate measures looking to the preservation of order. It is manifestly the duty of the Government of Venezuela to take its own police measures for the preservation of property and the protection of rights, and in view of the assurance above given and of

the statement of the minister of foreign relations in the note inclosed in your No. 545 of the 13th ultimo, that the courts of justice offer a full guaranty of impartiality, the Department does not deem it necessary to add to the instructions already given you further than to say that you will vigilantly guard the interests of all Americans alike, and will, if necessary, earnestly protest against the infringement of those rights by arbitrary and forcible executive action.

I am, etc.,

DAVID J. HILL,
Acting Secretary.

The Acting Secretary of State to Mr. Loomis.

No. 391.] DEPARTMENT OF STATE,
Washington, February 8, 1901.

SIR: I have to acknowledge the receipt of your No. 556 of the 26th ultimo, relative to the case of the New York and Bermudez Company, and approve your note of the 14th ultimo to the Venezuelan foreign office, containing this Government's protest against the dispossession of American citizens of their property without due process of law.

I am, etc., DAVID J. HILL,
Acting Secretary.

Mr. Loomis to Mr. Hay.

No. 561.] LEGATION OF THE UNITED STATES,
Caracas, February 10, 1901.

SIR: Answering your instructions of January 21, No. 384, in which I am directed to ascertain "whether the Warner-Quinlan Company have adequate remedy in the courts to assert and maintain their legal rights and title, if they have any, to the asphalt mine as against the New York and Bermudez Company," I have the honor to report that it is a matter of great difficulty to get thoroughly reliable and competent legal advice here. I have the statement of the minister of foreign affairs to the effect that most of the lawyers in Caracas are so open to the influence of money that their opinions are not to be relied upon. I have consulted Señor Feo, who by common consent appears to be deemed the man of highest character in the legal profession here, and who, at the same time, is one of the three or four lawyers occupying the first rank in that profession in Venezuela.

I put the question propounded by the Department first in a hypothetical way and later made it apply specifically to the case in point. Señor Feo first cited the following section of the law:

> In all cases of disputed titles the first branch of the first instance of the high federal court shall pass upon the nullity or validity of said titles.

Then he said: "The Warner-Quinlan Company will have to go to the courts unless the property claimed by it under the titles recognized in the decree of December 10, 1900, is turned over to it by the New York and Bermudez Company. If the New York and Bermudez Company declines to vacate the property claimed by the Warner-

Quinlan Company, it will then be incumbent upon the latter company to report that fact to the Government, and the Government must then send the case to the supreme court to decide the question of validity of title. That this and all questions of title should ultimately go to the high federal court in cases of contest for judicial determination and decision is, according to the laws and procedure of Venezuela, inevitable. No other authority than the high federal court is competent to determine the validity of title or decide as to questions of infringement. The case can be sent by the Government at once to the high federal court and does not have to pass through any intermediate courts. Of course the Government may refuse to submit the case to the court, but that would be acting in direct opposition to the law.

"On the other hand, there is a remedy for the New York and Bermudez Asphalt Company in the same court. It may at any time bring an action against the Government, setting up that the titles granted by it infringe upon the rights and titles long since granted to said company by due process of law."

The fact seems to be that neither the Warner-Quinlan Company nor the New York and Bermudez Company desire to commence legal proceedings in the Venezuelan courts. Each side wants the other to take the initiative. I should think, however, that the matter would finally reach the court unless settled otherwise, in the manner indicated by Señor Feo; that is, the Warner-Quinlan people will go to the mine to take possession. The representatives of the New York and Bermudez Company will, I am informed, eject them, and then the Government will be petitioned to put the Warner-Quinlan Company in possession, and the Government must then have the question of title definitely determined by the high federal court.

There is no difficulty whatsoever, it appears, about the question of title and rights being determined judicially, except the apparent unwillingness of the interested parties to seek this remedy.

Señor Feo also said that the validity, character, scope, and interpretation of a concession must be determined by the supreme court, and that no executive act which had the effect of invalidating or limiting the rights and privileges granted or enjoyed under a concession ratified by Congress could stand. Such an act would be illegal, irregular, and unconstitutional.

I can see no valid reason why either the New York and Bermudez Company or the Warner-Quinlan Company should object to having the question of title determined by the courts here, if the case is to be finally reviewed by the Department of State at Washington.

I have, etc.,

FRANCIS B. LOOMIS.

Mr. Loomis to Mr. Hay.

No. 566, confidential.] LEGATION OF THE UNITED STATES,
Caracas, February 22, 1901.

SIR: I am in receipt of your instructions, No. 387, dated January 28, relating to the New York and Bermudez Asphalt Company and setting forth the position of the Government of the United States in the matter, and explaining its attitude toward the Venezuelan Government.

I have communicated the Department's views to the Government of Venezuela as directed and I am sure there is no misunderstanding concerning the attitude taken by the United States Government in this affair, nor do I think there has been any considerable misunderstanding on this point at all here, though something of the sort was plainly indicated in some of the notes sent to this legation. It never appeared in any one of the many conversations which I have had on the subject of this controversy with various persons in official place here that the attitude and desires of the United States were misconstrued. Indeed, it was stated with so much clearness and frequency in just what the reasonable request and expectation of the United States Government consisted that there could have been no real misunderstanding on the point. The fact that there was a discrepancy between what was said to me and what was written does not mean much. No occurrence is more common here. All of my diplomatic colleagues have a score of times commented upon the fact that they are frequently told one thing and perhaps a few days later receive a note which ignores all of the solemn verbal assurances they had received and probably communicated to their governments. There are many practices current here which make it very difficult to transact business, and this is one.

There has never been a time since the promulgation of the decree of December 10, in reference to the asphalt controversy, when the operation of that instrument could not have been temporarily suspended as a matter of comity and courtesy to the Government of the United States. Practically the decree, so far as the question of disturbing the possession of the New York and Bermudez Company, for the time apparently has been suspended, presumably as the result of protests from Washington. It has seemed to me that this should have been done in a gracious and generous manner.

I think the plain disposition here is to have the matter determined by the courts, as you suggest. The original intention, so far as it could be ascertained, did not contemplate a determination of title by the courts prior to the dispossession of the New York and Bermudez Asphalt Company. What is known in commercial parlance as a "quick transaction" appears to have been desired. Resort to the courts is almost sure to bring its chain of embarrassments. It seems likely that either the Warner-Quinlan people or the New York and Bermudez Company will be wholly dissatisfied with the finding of the court, and seek some further determination of the matter. The courts here often labor under grave disadvantages.

[Confidential.]

Since my residence here I have seen a majority of the members of the supreme court arrested, imprisoned, and finally removed from office for intimating that they would not decide a case in the manner desired by the Chief Executive.

While on this general subject, I feel constrained to say, referring to the Department's instruction numbered 390, that in the foreign minister's note of January 13, inclosed in my number 539, the assurances about the ability of the Government to protect property and rights are rather overstated. At the time the note was written the Government could not have guaranteed any sort of sufficient, ade-

quate, or prompt police or military protection in the district referred to. It was in a state of revolution and semianarchy, as frequently happens in this country during times of acute political disturbance. Had any revolutionary or guerrilla band, as had been done in the past, chosen to descend with hostile intent upon the Americans at the plant of the New York and Bermudez Company, those there, men, women, and children, would have had to rely upon themselves for defense and protection, and on themselves only. The pitch lake is fourteen hours by sea from the nearest cable station. I received a number of reports from there which were sent by Major Rafferty, a man of high character and good judgment, who has had fine military training and experience. These reports were later corroborated by a messenger from the spot. It seemed to me that in view of such representations I would be taking an unwarrantable responsibility if I did not suggest sending a gunboat. I made that suggestion knowing the isolated situation of the lake and for the further reason that I hoped in this way to get a fresh report on the real situation from sources which could not even be suspected of bias.

I have, etc., FRANCIS B. LOOMIS.

Mr. Loomis to Mr. Hay.

No. 567.] LEGATION OF THE UNITED STATES,
Caracas, February 23, 1901.

SIR: I have the honor to report that preliminary legal steps have been taken by the resident attorney of Messrs. Warner and Quinlan to bring the question of title to the "Felicidad" mine before the high federal court for judicial determination.

The case may have a hearing inside of forty days, or if one or both parties desire seriously to employ dilatory tactics a decision is not likely to be rendered inside of six or seven months.

I have, etc.,

FRANCIS B. LOOMIS.

Mr. Loomis to Mr. Hay.

No. 579.] LEGATION OF THE UNITED STATES,
Caracas, March 9, 1901.

SIR: I have the honor to inclose herewith an affidavit made by A. F. Jaurett, esq., owner and publisher of the Venezuelan Herald. Mr. Jaurett, in this affidavit, throws much light upon the origin of the recent newspaper attacks upon this legation. His information corresponds with that which I have received from other sources, and I think there can be no doubt that these uncalled-for and offensive articles were in nearly every case directly inspired by certain members of the cabinet and sometimes written by them, except the one in which, it is asserted by one of the publishers, the article came from Miraflores, the residence of General Castro.

I have, etc.,

FRANCIS B. LOOMIS.

[Inclosure.]

LEGATION OF THE UNITED STATES,
Caracas, Venezuela, March 9, 1901.

A. F. Jaurett, an American citizen, being duly sworn deposed as follows:

I am an American citizen living temporarily in Caracas, where I own and publish the Venezuelan Herald. I have a large acquaintance among newspaper men in this city and country. Among others I have known for several years Señor Salomon, who is the business manager of the Pregonero newspaper of this city. I have been able to do him some considerable personal favors in the past, and he has a very friendly feeling for me and often calls to see me at my house. He has been to see me several times of late and has talked freely about the attacks which have appeared in the Pregonero upon the United States Navy, legation, and Department of State. He is a Frenchman and does not share the feeling of Venezuelan officials toward the Americans. He called at my house last night and said: "I was in the office of General Ayala, minister of fomento, the day before the first article appeared in the Pregonero, with General Ayala and Doctor Ponte, the publisher of that paper, and Senor Grilett, the secretary of General Ayala. General Ayala said to Mr. Ponte, and I recall his exact words, 'Now, Ponte, you can begin the campaign against the Americans and hit them hard, especially Loomis, and repeat the dose daily.'" The first article was ordered the same night and was written by Grillet, the secretary to the minister of fomento, and another man.

Some of the articles attacking Mr. Loomis came to the Pregonero in the handwriting of the minister of fomento himself, and all of the articles translated from the American press were translated by the official translator of the ministry of fomento, who was engaged for this work, so it was stated at the ministry. Señor Salomon was present at several interviews between General Ayala and the publisher of the Pregonero and heard the matter of attacking the American legation discussed freely.

I have myself seen, continues Mr. Jaurett, Señor Salomon at the ministry of fomento talking with the minister and the publisher of the Pregonero. I regard Salomon as a truthful man. He has told the same thing herein related to others. He has no object in telling this story. He related it to me because he is my personal friend and because he knew I was also to be attacked by the Government asphalt ring here, a most corrupt and audacious combination.

When I asked him to make affidavit to this statement he said it would or might become known, and he would then lose his livelihood and be persecuted by the Government. He is right about that, and can not be blamed for declining to make an official statement in this matter.

A. F. JAURETT.

Sworn to and subscribed before me this 9th day of March, 1901.

WILLIAM W. RUSSELL,
United States Secretary, Legation.

Mr. Loomis to Mr. Hay.

No. 580.] LEGATION OF THE UNITED STATES,
Caracas, March 9, 1901.

SIR: Referring to the asphalt controversy I have to report that on February 16, Messrs. Zuloga & Paul, attorneys for Messrs. Quinlan and Warner, of New York, petitioned the Alta Corte Federal for the issuance of a citation to compel the New York and Bermudez Company to recognize the title of said Warner & Quinlan in the mine known as "La Felicidad."

Before a citation may issue it is necessary that the question be considered by the court in full session. Such a session has not been held up to this writing, and no citation has yet been issued.

It is likely that one side or the other, or the Government itself, has prevented a full session. This is a common device here and frequently resorted to in order to bring about delay.

The Government seems to be the only power that can compel a full session at any time.

I have, etc., FRANCIS B. LOOMIS.

Mr. Russell to Mr. Hay.

No. 609.] LEGATION OF THE UNITED STATES,
Caracas, May 3, 1901.

SIR: As already reported, the attorneys for Messrs. Warner & Quinlan commenced proceedings against the New York and Bermudez Company in the federal court.

Mr. Bean, the attorney for the New York and Bermudez Company, filed exceptions to the suit and alleged that the federal court had no jurisdiction in a suit of this nature. The case has been argued on these exceptions for several weeks and a decision was about to be given. On May 1 the Government issued the inclosed decree. The attorney for the New York and Bermudez Company claims that this would be an evident denial of justice and has given me a statement in regard to the decree, which I also inclose.

I have, etc.,

WILLIAM W. RUSSELL.

[Inclosure.]

The provisional President of the United States of Venezuela, in exercise of the faculties in him conferred by clause 2 of article 3 of the decree of the National Constituent Assembly on the provisional organization of the Republic, decrees:

ART. 1. The organic code of the federal code of the court of cassation and the other federal tribunals shall be in force and effect until the national laws have been examined in accordance with the provisions of clause 3 of article 3 of the said decree, in order that the Congress should harmonize them with the constitution.

ART. 2. The federal court shall elect, from those six members who are not exercising functions, the prosecutor, chancellor, and the two members who, presided by the vice-president, shall form the division created by section 2, subsection 13a of article 106 of the national constitution.

ART. 3. In those cases in which, according to the national constitution, the federal court shall unite with the court of cassation to constitute a supreme federal court of the president of the federal court shall act as president, the vice-president of the court of cassation as vice-president, and as prosecutor and chancellor of those affairs of the federal court and, in their absence, those of the court of cassation.

ART. 4. The functionaries of the division mentioned in article 2 of this decree and those of the supreme federal court shall have the respective powers that the organic code of the federal court confers on its functionaries in judicial matters.

ART. 5. Vacancies shall be filled in the manner provided in paragraph 2 of article 102 of the constitution, and temporary and occasional absence in the manner provided in the respective laws.

ART. 6. Any member who, without justifiable cause, shall be absent from any sitting of the court shall ipso facto be suspended from the exercise of this function for fifteen days, and during that time the judge who shall be appointed to act shall receive his salary.

ART. 7. The minister of the interior is charged to see to the execution of this decree.

Given, signed, sealed with the seal of the National Executive, and countersigned by the minister of the interior, at the federal palace at Caracas, this 1st day of May, 1901.

Year ninety of independence and forty-three of the federation.

CIPRIANO CASTRO.

(Countersigned.)
The minister of the interior.

J. A. VULUTINI.

[Statement of Mr. H. W. Bean.]

On May 1, 1901, there appeared in the Official Gazette a decree of the provisional president organizing the federal court and providing that the organic code of the federal court, the court of cassation, and the other tribunals of the Republic should be in force until the Congress (which is scheduled to meet in February next) shall act.

This decree, issued under a power given the provisional president by the Constitutional Assembly to provisionally organize all branches of the public service, and in the exercise of a further power to provide for the examination of the laws and note the reforms which may be necessary, to the end that Congress may harmonize these laws with the constitution which has just been adopted (Official Gazette, April 15, 1901), was passed with the idea of giving jurisdiction to the present federal court in the action brought by Quinlan and Warner against the New York and Bermudez Company. It is an open secret that it was revised by Zuloaga, and its passage secured by the influence of Felipe Arocha, the minister of fomento.

It calls the organic law (which is the law passed by Congress on the 14th of May, 1894, and approved by Crespo on the 29th of May, 1894, the Congress acting under powers given to it by the Constitution then in force to define the jurisdiction of the Alta Corte Federal) a "code" in order to bring it within a provision of the new constitution, which says "that the corte federal shall have jurisdiction which is provided by the constitution and the national codes" (article 106 of the constitution of 1901). The national codes are the civil and criminal codes, and the code of civil procedure.

It is clearly an attempt to enlarge the powers of the federal court, which is a political body, by giving the court, a larger jurisdiction than is given by the new constitution, and as such is a violation of the new constitution.

Mr. Russell to Mr. Hay.

No. 619.] LEGATION OF THE UNITED STATES,
Caracas, June 1, 1901.

SIR: I have the honor to herewith forward a statement filed with me by Mr. Bean, the managing director of the New York and Bermudez Asphalt Company.

Referring to a former dispatch I have the honor to state that the court has decided against the exceptions to the suit taken by the attorneys of the Bermudez Company.

I await your instructions in the matter.

I have, etc.,

WILLIAM W. RUSSELL.

Mr. Bean to Mr. Russell.

CARACAS, *June 1, 1901.*

Mr. WILLIAM WORTHINGTON RUSSELL,
Chargé d'Affaires at interim of the United States, Caracas, Venezuela.

SIR: On the 16th of February, 1901, Warner & Quinlan, through their attorneys, filed their libel in a suit brought by them before the high federal court against the New York and Bermudez Company, a copy and translation of which libel, together with an amendment thereto, filed March 16, 1901, is hereto annexed, marked "Exhibit A."

It will be observed that the substance of the allegations made in the libel by Warner & Quinlan is that they are the owners of a mine called "La Felicidad;" that the New York and Bermudez Company claims that the title to the mine is not valid, having alleged in petitions directed to the National Government that the mine Felicidad is within the boundaries of a mining concession granted to Carner in 1888 and now owned by said company, and that by reason of a contract made by the National Executive with Hamilton in 1884, and duly assigned to said company, the National Government had not the right to grant the mining title to Felicidad; that these petitions constitute a continuing disturbance in the enjoyment of their rights. The libel therefore prays that the New York and Bermudez Company shall recognize the validity of the title to the mine Felicidad, and in case the New York and Bermudez Company shall not so recognize the title, that the "alta corte federal" shall declare the validity of the title in conformity with its functions.

On the 17th of April the New York and Bermudez Company filed exceptions to this libel, which exceptions, together with a translation of the same, are marked "Exhibit B" and hereto attached.

The first of these exceptions, that of incompetency of the tribunal, is founded on the following facts:

First. The action was brought at the time when the constitution of 1893 was declared by General Castro, then dictator, in force so far as it did not interfere with the principles of the liberal revolution. (See volume of documents submitted to the Department of State in the matter of the controversy of the New York and Bermudez Company and the Government of the United States of Venezuela, p. 590.)

Under the constitution of 1893 the "alta corte federal" had by the one hundred and tenth article of the constitution such attributes as are there given it, and such functions as may be assigned to it by the laws. (See Documents, p. 656.)

On May 29, 1894, the Congress of the United States of Venezuela passed an act entitling it "The organic law of the high federal court and other tribunals of May 29, 1894" (vol. 17, Recop de Leyes, p. 244), in which the duties of the various functionaries of the high federal court are determined, and in article 12 the powers of the court other than those expressly given by the constitutions, are set forth in 19 different articles. All of these articles, with the exception of articles 6, 10, and 18, are to "hear and decide," a phrase used of contentious litigation. Article 6 gives the court power to decide in petitions for extradition, and article 18 gives the power to decide appeals, etc.

The tenth subdivision of this article reads as follows:

"*Spanish.*—Declarar la validez o mulidad de los titulos de minas o de tierras balidas que haya expedido el Gobierno nacional, y contra los cuales se reclame.

"*English translation.*—To declare the validity or nullity of titles of mines or of adjudication of wild lands, which the National Government has issued, and against which there is a claim (i. e., lawsuit)."

The power was given the court by the laws of 1894 for the eminently practical reason that the brother of the then prime minister desired a sentence of the high federal court affirming his title to a disputed gold mine in Guyana. In the three or four cases in which the court has acted under this power, it has always been in a suit brought against the nation in which both parties had agreed on the result, and the court exercising its power as an administrative court, had given the decision in a "declaratory" sentence.

The suit brought by Warner and Quinlan, aside from this power given under the organic law of 1894, has no justification, because, in fact, it is not a suit known to the Venezuelan law. It is an attempt to bring a "revindicatory" action without submitting to the trial of the facts and the appeals incident thereto under the laws of Venezuela.

Second. The constitution of 1901 was published and went into effect on the 13th of April, 1901, and takes away this extraordinary power of the court.

The material portion of article 106 of this constitution reads as follows:

[Spanish.]

"Son atribuciones de la Corte Federal, á más de las que le senale esta Constitución y le atribuyan los Códigos Nacionales y las leyes de los Estados en materia de elecciones:"

[English translation.]

"The powers of the federal court, beside those determined by the constitution and those given by the national codes and the laws of the different States on the subject of elections, are the following:"

(Here follow thirteen articles, none of which authorize the bringing of such a suit.)

Reading of articles 104 to 107 of the new constitution (the Official Gazette, April 13, 1901, which contains same and translation of said articles is hereto annexed marked "Exhibit C") shows that a new court is organized with a new name, new internal divisions, new duties, differently assigned, and an appeal to a supreme federal tribunal not known to the high federal court existing under the constitution of 1893.

The exceptions were filed April 17. On May 1, 1901, General Castro, Provisional President of the Republic, elected by the constituent assembly, passed an act which reads as follows:

[Spanish.]

"EL PRESIDENTE PROVISIONAL DE LOS ESTADOS UNIDOS DE VENEZUELA,

"en uso de las facultades que le confiere el número 2, del artículo 3 del Decreto de la Asamblea Nacional Constituyente, sobre Organización Provisional de la República, decreta:

"ART. 1. Mientras de hacer el examen de las leyes nacionales, conforme a lo dispuesto en el número 3, del artículo 3 del citado Decreto, á ende que el Congreso las armonice con la Constitución, rige el Código orgánico de las Cortes Federal y de Casación y demás Tribunales Federales."

[English translation.]

"THE PROVISIONAL PRESIDENT OF THE UNITED STATES OF VENEZUELA,

"in exercise of the faculties on him conferred by clause 2 of article 3 of the decree of the national constituent assembly on the provisional organization of the Republic, decrees:

"ART. 1. The organic code of the federal court, of the court of cassation, and the other federal tribunals shall be in force and effect until the national laws have been examined, in accordance with the provisions of clause 3 of article 3 of the said decree, in order that the Congress should harmonize them with the constitution."

(Here follow immaterial parts of the decree relating to duties of functionaries. For full text of the decree and translation of the same see Exhibit D, consisting of Official Gazette of May 1, 1901, and translation).

This act was passed under the power given by the constituent assembly to the Provisional President to organize the national public powers (see Official Gazette, April 15, and translation of decree, marked "Exhibit E"), and was intended to give the court jurisdiction of the action as brought.

Simple reading of the decree of the constituent assembly under which the Provisional President acted shows that the constituent assembly did not intend to give and did not give him the power to legislate.

But even if the Provisional President had the power to legislate, the decree of May 1, 1901, in article 1, was unconstitutional and void, since it is contrary to the express terms of the constitution then and now in force.

On May 27, 1901, Dr. Hermosa Telleria, the president of the federal court, sitting alone as judge of examination, decided that the federal court was competent, basing his decision at bottom on the fact that the organic law of May 29, 1894, was in force. (I inclose a certified copy of his decision and a translation of same, marked "Exhibit F.")

The matter was argued at great length and was well understood. The New York and Bermudez Company is now endeavoring to have the question of its competency considered by the full court, which consists of two lawyers, one man who has studied law and seven generals, in order that the manifest error may be corrected or that the first steps in a complete denial of justice, sanctioned by ten members of the court, may be made so plain that he who runs may read. The attempt in these proceedings is to give a color of law by the use of every governmental power to the attack on the vested rights of the New York and Bermudez Company. For this reason it is that I have ventured to trouble you with so much detail, and have endeavored to substantiate every statement by the production of the documents in order that the protest may be the stronger.

Very respectfully,

H. W. BEAN,
Managing Director, New York and Bermudez Company.

[Inclosure.]

[Translation of certified copy of libel.]

Citizen president and other members of the alta corte federal (hall of the first and only instance):

We, Nicomedes Zuloaga and Jose de Jesus Paul, lawyers, as substituted attorneys of Mr. Patrick R. Quinlan, for himself and for his coowner, Mr. Charles Warner, as is stated by the certificate which we inclose of the secretary of the tribunal of the department libertador of the federal district, respectfully set forth to you the following:

Our representatives are the owners of the mine of asphalt "Felicidad," situated in the old State of Bermudez, district Benitez, Parish Union, to the east of the spot called "Usirina," on the Gulf of Paria, near the Cano known by the name of "El Majagual," and bounded on all its sides by wild lands, consisting of two hundred and eighty-three hectares, which was conceded to Mr. Antonio Bianchi, Antonio Cervoni, Jose Francisco Micheli, and Mateo Guearra Marcano, as is stated by the definitive title granted in Caracas on the 30th of November of one thousand eight hundred

and ninety-seven (1897) by the President of the Republic, of which we inclose a certified copy marked with the letter "A," and as is also stated by the plan surveyed by the public surveyor, Pedro Vicente Felce, to which said title refers, an authentic copy of which plan we also inclose, marked with the letter "B." Our representatives obtained the said mine by transfer which its first owners made of it, as appears by documents authenticated in Caracas before the tribunal of the parish of the western part, and thereafter registered in the office of the registry of the district Benitez; and we reserve the right to present the proper testimony of the protocolization of this, accompanied at the same time by certified copies of the sale made to our mandators, and of the notification which was made to the proper ministry.

Messrs. Warner and Quinlan, in use of their legal rights, intend to exploit their mine "Felicidad;" but the New York and Bermudez Company, an American company, which has various exploitations in the same old State of Bermudez, claims that the title of our mandators is not valid, alleging that the mine "Felicidad" is comprised within another mining concession granted to the said company in the name of its secretary, A. Howard Carner, in the year one thousand eight hundred and eighty-eight (1888), and alleging besides that by a contract made by the National Executive with Horatio R. Hamilton, in the year one thousand eight hundred and eighty-three (1883) (a contract published in the Recopilacion Official, tomo 11, No. 2642), and of which the New York and Bermudez Company became assignee, the national administration could not grant the mining concession "Felicidad."

The first fact alleged, that the concession "Felicidad" is within the Carner concession of the New York and Bermudez Company, is completely contrary to the truth, as is shown by the simple comparison of the title of mine obtained by the New York and Bermudez Company, as well as from the title and the plan of wild lands which were conceded for the purposes of exploitation of its mine, which we inclose in certified copies marked with the letters "C," "D," and "E," with the title and map of the mine "Felicidad." For the more easy study of the points or situation of both mines, with a comparison of the two plans, we inclose also a superimposition of them, or a transfer of the plan of the mine of the New York and Bermudez Company to the plan of the mine "Felicidad," enlarging the first to a double scale, in order that both should be drawn according to the same scale. This superimposition is marked with the letter "F."

In respect to the second point, or the attempt to oppose the Hamilton contract to our mandators, the reading of the contract is sufficient to convince that the said contract does not give to the New York and Bermudez Company or to its assign the exclusive right of exploitation of the mines of asphalt, and that therefore it does not diminish in any respect the rights legally acquired by our mandators—such pretensions being, besides, opposed to the constitution and laws of the Republic. Such claims of the New York and Bermudez Company, which have been formulated in petitions to the National Government in order to dispossess our mandators of their property—petitions which have been justly denied by the resolution of the Government of the 10th of December of the year last passed, constitute for our mandators a continuing disturbance in the enjoyment of their rights; and as, on the other hand, there appears in the ministry of fomento a protest formulated by A. H. Carner, in his character of director of the New York and Bermudez Company, under date of the 14th of December last, against the said resolution of the Government, we come before this high tribunal, as representatives of Messrs. Patrick R. Quinlan and Charles Warner, citizens of the United States of North America, residents of Syracuse, State of New York, making formal suit against the New York and Bermudez Company, domiciled in the State of New York, of the United States of North America, in order that it shall recognize the validity of the title of the mine "Felicidad" belonging to our mandators; and in case they will not agree, we petition the high federal court that it will declare the validity of the said title, in conformity with its legal functions, and as a final sentence in this trial against the New York and Bermudez Company.

We inclose the Official Gazette No. 8105, where is set forth the resolution of the Government of the 10th of December of the year last passed, and which contains the interpretation which the National Government gives to the Hamilton contract, in what refers to the extent of its concessions; and we inclose also two certified copies marked with the letters "G" and "H" of the petition and protest of the director of the New York and Bermudez Company, referring to his claims which caused this action.

We petition that the said company should be finally condemned in costs; and as we understand that Mr. Henry Willard Bean, American lawyer, who is at present in this city, is attorney of the company sued, although, because he is not a Venezuelan lawyer he will not be able to represent in the trial, he may substitute his power in case it is sufficient, we petition this high federal court that it will please cause him to be cited,

This decree, issued under a power given the provisional president by the Constitutional Assembly to provisionally organize all branches of the public service, and in the exercise of a further power to provide for the examination of the laws and note the reforms which may be necessary, to the end that Congress may harmonize these laws with the constitution which has just been adopted (Official Gazette, April 15, 1901), was passed with the idea of giving jurisdiction to the present federal court in the action brought by Quinlan and Warner against the New York and Bermudez Company. It is an open secret that it was revised by Zuloaga, and its passage secured by the influence of Felipe Arocha, the minister of fomento.

It calls the organic law (which is the law passed by Congress on the 14th of May, 1894, and approved by Crespo on the 29th of May, 1894, the Congress acting under powers given to it by the Constitution then in force to define the jurisdiction of the Alta Corte Federal) a "code" in order to bring it within a provision of the new constitution, which says "that the corte federal shall have jurisdiction which is provided by the constitution and the national codes" (article 106 of the constitution of 1901). The national codes are the civil and criminal codes, and the code of civil procedure.

It is clearly an attempt to enlarge the powers of the federal court, which is a political body, by giving the court, a larger jurisdiction than is given by the new constitution, and as such is a violation of the new constitution.

Mr. Russell to Mr. Hay.

No. 619.] LEGATION OF THE UNITED STATES,
Caracas, June 1, 1901.

SIR: I have the honor to herewith forward a statement filed with me by Mr. Bean, the managing director of the New York and Bermudez Asphalt Company.

Referring to a former dispatch I have the honor to state that the court has decided against the exceptions to the suit taken by the attorneys of the Bermudez Company.

I await your instructions in the matter.

I have, etc.,

WILLIAM W. RUSSELL.

Mr. Bean to Mr. Russell.

CARACAS, *June 1, 1901.*

Mr. WILLIAM WORTHINGTON RUSSELL,
Chargé d'Affaires at interim of the United States, Caracas, Venezuela.

SIR: On the 16th of February, 1901, Warner & Quinlan, through their attorneys, filed their libel in a suit brought by them before the high federal court against the New York and Bermudez Company, a copy and translation of which libel, together with an amendment thereto, filed March 16, 1901, is hereto annexed, marked "Exhibit A."

It will be observed that the substance of the allegations made in the libel by Warner & Quinlan is that they are the owners of a mine called "La Felicidad;" that the New York and Bermudez Company claims that the title to the mine is not valid, having alleged in petitions directed to the National Government that the mine Felicidad is within the boundaries of a mining concession granted to Carner in 1888 and now owned by said company, and that by reason of a contract made by the National Executive with Hamilton in 1884, and duly assigned to said company, the National Government had not the right to grant the mining title to Felicidad; that these petitions constitute a continuing disturbance in the enjoyment of their rights. The libel therefore prays that the New York and Bermudez Company shall recognize the validity of the title to the mine Felicidad, and in case the New York and Bermudez Company shall not so recognize the title, that the "alta corte federal" shall declare the validity of the title in conformity with its functions.

On the 17th of April the New York and Bermudez Company filed exceptions to this libel, which exceptions, together with a translation of the same, are marked "Exhibit B" and hereto attached.

The first of these exceptions, that of incompetency of the tribunal, is founded on the following facts:

First. The action was brought at the time when the constitution of 1893 was declared by General Castro, then dictator, in force so far as it did not interfere with the principles of the liberal revolution. (See volume of documents submitted to the Department of State in the matter of the controversy of the New York and Bermudez Company and the Government of the United States of Venezuela, p. 590.)

Under the constitution of 1893 the "alta corte federal" had by the one hundred and tenth article of the constitution such attributes as are there given it, and such functions as may be assigned to it by the laws. (See Documents, p. 656.)

On May 29, 1894, the Congress of the United States of Venezuela passed an act entitling it "The organic law of the high federal court and other tribunals of May 29, 1894" (vol. 17, Recop de Leyes, p. 244), in which the duties of the various functionaries of the high federal court are determined, and in article 12 the powers of the court other than those expressly given by the constitutions, are set forth in 19 different articles. All of these articles, with the exception of articles 6, 10, and 18, are to "hear and decide," a phrase used of contentious litigation. Article 6 gives the court power to decide in petitions for extradition, and article 18 gives the power to decide appeals, etc.

The tenth subdivision of this article reads as follows:

"*Spanish.*—Declarar la validez o mulidad de los titulos de minas o de tierras balidas que haya expedido el Gobierno nacional, y contra los cuales se reclame.

"*English translation.*—To declare the validity or nullity of titles of mines or of adjudication of wild lands, which the National Government has issued, and against which there is a claim (i. e., lawsuit)."

The power was given the court by the laws of 1894 for the eminently practical reason that the brother of the then prime minister desired a sentence of the high federal court affirming his title to a disputed gold mine in Guyana. In the three or four cases in which the court has acted under this power, it has always been in a suit brought against the nation in which both parties had agreed on the result, and the court exercising its power as an administrative court, had given the decision in a "declaratory" sentence.

The suit brought by Warner and Quinlan, aside from this power given under the organic law of 1894, has no justification, because, in fact, it is not a suit known to the Venezuelan law. It is an attempt to bring a "revindicatory" action without submitting to the trial of the facts and the appeals incident thereto under the laws of Venezuela.

Second. The constitution of 1901 was published and went into effect on the 13th of April, 1901, and takes away this extraordinary power of the court.

The material portion of article 106 of this constitution reads as follows:

[Spanish.]

"Son atribuciones de la Corte Federal, á más de las que le senale esta Constitución y le atribuyan los Códigos Nacionales y las leyes de los Estados en materia de elecciones:"

[English translation.]

"The powers of the federal court, beside those determined by the constitution and those given by the national codes and the laws of the different States on the subject of elections, are the following:"

(Here follow thirteen articles, none of which authorize the bringing of such a suit.)

Reading of articles 104 to 107 of the new constitution (the Official Gazette, April 13, 1901, which contains same and translation of said articles is hereto annexed marked "Exhibit C") shows that a new court is organized with a new name, new internal divisions, new duties, differently assigned, and an appeal to a supreme federal tribunal not known to the high federal court existing under the constitution of 1893.

The exceptions were filed April 17. On May 1, 1901, General Castro, Provisional President of the Republic, elected by the constituent assembly, passed an act which reads as follows:

[Spanish.]

"EL PRESIDENTE PROVISIONAL DE LOS ESTADOS UNIDOS DE VENEZUELA,

"en uso de las facultades que le confiere el número 2, del artículo 3 del Decreto de la Asamblea Nacional Constituyente, sobre Organización Provisional de la República, decreta:

"ART. 1. Mientras de hacer el examen de las leyes nacionales, conforme a lo dispuesto en el número 3, del artículo 3 del citado Decreto, á ende que el Congreso las armonice con la Constitución, rige el Código orgánico de las Cortes Federal y de Casación y demás Tribunales Federales."

[English translation.]

"THE PROVISIONAL PRESIDENT OF THE UNITED STATES OF VENEZUELA,

"in exercise of the faculties on him conferred by clause 2 of article 3 of the decree of the national constituent assembly on the provisional organization of the Republic, decrees:

"ART. 1. The organic code of the federal court, of the court of cassation, and the other federal tribunals shall be in force and effect until the national laws have been examined, in accordance with the provisions of clause 3 of article 3 of the said decree, in order that the Congress should harmonize them with the constitution."

(Here follow immaterial parts of the decree relating to duties of functionaries. For full text of the decree and translation of the same see Exhibit D, consisting of Official Gazette of May 1, 1901, and translation).

This act was passed under the power given by the constituent assembly to the Provisional President to organize the national public powers (see Official Gazette, April 15, and translation of decree, marked "Exhibit E"), and was intended to give the court jurisdiction of the action as brought.

Simple reading of the decree of the constituent assembly under which the Provisional President acted shows that the constituent assembly did not intend to give and did not give him the power to legislate.

But even if the Provisional President had the power to legislate, the decree of May 1, 1901, in article 1, was unconstitutional and void, since it is contrary to the express terms of the constitution then and now in force.

On May 27, 1901, Dr. Hermosa Telleria, the president of the federal court, sitting alone as judge of examination, decided that the federal court was competent, basing his decision at bottom on the fact that the organic law of May 29, 1894, was in force. (I inclose a certified copy of his decision and a translation of same, marked "Exhibit F.")

The matter was argued at great length and was well understood. The New York and Bermudez Company is now endeavoring to have the question of its competency considered by the full court, which consists of two lawyers, one man who has studied law and seven generals, in order that the manifest error may be corrected or that the first steps in a complete denial of justice, sanctioned by ten members of the court, may be made so plain that he who runs may read. The attempt in these proceedings is to give a color of law by the use of every governmental power to the attack on the vested rights of the New York and Bermudez Company. For this reason it is that I have ventured to trouble you with so much detail, and have endeavored to substantiate every statement by the production of the documents in order that the protest may be the stronger.

Very respectfully,

H. W. BEAN,
Managing Director, New York and Bermudez Company.

[Inclosure.]

[Translation of certified copy of libel.]

Citizen president and other members of the alta corte federal (hall of the first and only instance):

We, Nicomedes Zuloaga and Jose de Jesus Paul, lawyers, as substituted attorneys of Mr. Patrick R. Quinlan, for himself and for his coowner, Mr. Charles Warner, as is stated by the certificate which we inclose of the secretary of the tribunal of the department libertador of the federal district, respectfully set forth to you the following:

Our representatives are the owners of the mine of asphalt "Felicidad," situated in the old State of Bermudez, district Benitez, Parish Union, to the east of the spot called "Usirina," on the Gulf of Paria, near the Cano known by the name of "El Majagual," and bounded on all its sides by wild lands, consisting of two hundred and eighty-three hectares, which was conceded to Mr. Antonio Bianchi, Antonio Cervoni, Jose Francisco Micheli, and Mateo Guearra Marcano, as is stated by the definitive title granted in Caracas on the 30th of November of one thousand eight hundred

and ninety-seven (1897) by the President of the Republic, of which we inclose a certified copy marked with the letter "A," and as is also stated by the plan surveyed by the public surveyor, Pedro Vicente Felce, to which said title refers, an authentic copy of which plan we also inclose, marked with the letter "B." Our representatives obtained the said mine by transfer which its first owners made of it, as appears by documents authenticated in Caracas before the tribunal of the parish of the western part, and thereafter registered in the office of the registry of the district Benitez; and we reserve the right to present the proper testimony of the protocolization of this, accompanied at the same time by certified copies of the sale made to our mandators, and of the notification which was made to the proper ministry.

Messrs. Warner and Quinlan, in use of their legal rights, intend to exploit their mine "Felicidad;" but the New York and Bermudez Company, an American company, which has various exploitations in the same old State of Bermudez, claims that the title of our mandators is not valid, alleging that the mine "Felicidad" is comprised within another mining concession granted to the said company in the name of its secretary, A. Howard Carner, in the year one thousand eight hundred and eighty-eight (1888), and alleging besides that by a contract made by the National Executive with Horatio R. Hamilton, in the year one thousand eight hundred and eighty-three (1883) (a contract published in the Recopilacion Official, tomo 11, No. 2642), and of which the New York and Bermudez Company became assignee, the national administration could not grant the mining concession "Felicidad."

The first fact alleged, that the concession "Felicidad" is within the Carner concession of the New York and Bermudez Company, is completely contrary to the truth, as is shown by the simple comparison of the title of mine obtained by the New York and Bermudez Company, as well as from the title and the plan of wild lands which were conceded for the purposes of exploitation of its mine, which we inclose in certified copies marked with the letters "C," "D," and "E," with the title and map of the mine "Felicidad." For the more easy study of the points or situation of both mines, with a comparison of the two plans, we inclose also a superimposition of them, or a transfer of the plan of the mine of the New York and Bermudez Company to the plan of the mine "Felicidad," enlarging the first to a double scale, in order that both should be drawn according to the same scale. This superimposition is marked with the letter "F."

In respect to the second point, or the attempt to oppose the Hamilton contract to our mandators, the reading of the contract is sufficient to convince that the said contract does not give to the New York and Bermudez Company or to its assign the exclusive right of exploitation of the mines of asphalt, and that therefore it does not diminish in any respect the rights legally acquired by our mandators—such pretensions being, besides, opposed to the constitution and laws of the Republic. Such claims of the New York and Bermudez Company, which have been formulated in petitions to the National Government in order to dispossess our mandators of their property—petitions which have been justly denied by the resolution of the Government of the 10th of December of the year last passed, constitute for our mandators a continuing disturbance in the enjoyment of their rights; and as, on the other hand, there appears in the ministry of fomento a protest formulated by A. H. Carner, in his character of director of the New York and Bermudez Company, under date of the 14th of December last, against the said resolution of the Government, we come before this high tribunal, as representatives of Messrs. Patrick R. Quinlan and Charles Warner, citizens of the United States of North America, residents of Syracuse, State of New York, making formal suit against the New York and Bermudez Company, domiciled in the State of New York, of the United States of North America, in order that it shall recognize the validity of the title of the mine "Felicidad" belonging to our mandators; and in case they will not agree, we petition the high federal court that it will declare the validity of the said title, in conformity with its legal functions, and as a final sentence in this trial against the New York and Bermudez Company.

We inclose the Official Gazette No. 8105, where is set forth the resolution of the Government of the 10th of December of the year last passed, and which contains the interpretation which the National Government gives to the Hamilton contract, in what refers to the extent of its concessions; and we inclose also two certified copies marked with the letters "G" and "H" of the petition and protest of the director of the New York and Bermudez Company, referring to his claims which caused this action.

We petition that the said company should be finally condemned in costs; and as we understand that Mr. Henry Willard Bean, American lawyer, who is at present in this city, is attorney of the company sued, although, because he is not a Venezuelan lawyer he will not be able to represent in the trial, he may substitute his power in case it is sufficient, we petition this high federal court that it will please cause him to be cited,

in order that he may declare whether the citation shall be addressed to him, and he shall substitute the powers to a person having legal capacity before proceeding to the naming of a defender of the company.

It is justice that we ask in Caracas, the sixteenth of February, one thousand nine hundred and one.

J. J. PAUL.
NICOMEDES ZULOAGA.

(Each signs this upon a stamp of one bolivar.)

[*Translation—Amendment to libel.*]

Citizen president of the alta corte federal, in your character of judge of examination of the hall of the first instance:

We, who subscribe in our character of attorneys for Señors Patrick R. Quinlan and Charles M. Warner, as is stated in the powers produced which accompany this writing, the original of which is presented in the copy with the libel of the demanda, set forth to you:

That we re-form the terms of the libel of the complaint in the parts where it says: "Alleging that the mine 'Felicidad' is comprised within another mining concession granted to the said company in the name of its secretary, A. Howard Carner, in the year one thousand eight hundred and eighty-eight," inserting in place thereof: "Alleging that the mine 'Felicidad' is comprised within another mining concession granted to A. Howard Carner, secretary of the New York and Bermudez Company, in one thousand eight hundred and eighty-eight, and transferred by this same A. Howard Carner and his wife, Ida A. Carner, to the said company by a document registered in Caracas under No. 32 of folio 33 of the first protocol, volume second of the fourth trimester of one thousand eight hundred and ninety-three, according to a certified copy which we inclose."

We accompany also certified copy of the deed of sale of the mine "Felicidad" to our mandators, as we promised to do in the libel of the complaint.

Caracas, March 16, 1901.

NICOMEDES ZULOAGA,
J. DE J. PAUL.

(Each signs this upon a stamp of one bolivar.)

The secretary of the political part, who subscribes, certifies that the preceding copies are in conformity with the libel of the demanda and reform, originals of which are found in the proper expediente.

Caracas, the 29th of March, 1901. Year ninetieth of the independence and forty-third of the federation.

JOSE RAMON CARCANO.

Presidency of the alta corte federal, in its character as tribunal of examination.

Caracas, 29th of March, 1901, ninetieth and forty-third.

Drs. Jose Loreto Arismendi and Carlos Leon, lawyers, and holding the substituted power of attorney of Señor Henry Willard Bean, representative of the New York and Bermudez Company, shall appear at 2 in the afternoon of the 10th suitable day after the citation to answer the complaint which the citizens Drs. Nicomedes Zuloaga and J. de J. Paul, as attorneys of Messrs. Patrick R. Quinlan and Charles M. Warner, have made against the said company in order that they shall agree in the validity of the title of the mine "Felicidad."

They shall give the proper receipt.

JOSE MANUEL MONTENEGRO.

We, Drs. Jose Loreti Arismendi and Carlos Leon, lawyers, attorneys according to the power which they present of the New York and Bermudez Company, opposed to the libel proposed by Drs. Nicomedes Zuloaga and Jose de Jesus Paul, in the name of Patrick R. Quinlan and Charles M. Warner, the following exceptions:

1. The exception of the incompetency of the tribunal. The federal court is a special tribunal which can take cognizance only of those matters which are made subject to its jurisdiction by the law which created it. The constitution, which was in force until the 13th of April last and during the operation of which this action was instituted, enumerated its judicial powers in the text thereof and left to the laws, according to the first and last section of article 110 of the constitution, the possibility of giving it other powers. In virtue of this constitutional provision the Congresses by their laws gave to it other judicial powers in various matters. The existing organic laws of this high tribunal in enumerating all the powers which the constitution as well as the laws

gave to the high federal court included other powers not given to it by the constitution and the laws, which could not be done legally, since an organic law has no other object than to settle the procedure of the court. The substantative laws establish the extent of its powers and the jurisdiction of the court, which can not exceed that laid down by those laws. All this shows that even under the existence of the former constitution the exception which we propose would be valid; but it is absolutely free from all doubt that the suit is completely under the power of the present constitution. Article 106 of this constitution establishes that the powers of the federal court are those set out in the said constitution and those attributed to it by the national codes, as well as the laws of the States in election matters, the power being taken away from Congress to grant other functions. Now, the subject of the present complaint is not submitted by the constitution nor any of the national codes to the competency of this court. It appears superfluous to call to the attention of this high tribunal that the fact of dragging anyone from his natural judges, apart from being a flagrant violation of a constitutional precept, constitutes at the same time and by obvious reasons a denial of justice and notorious injustice.

2. On the incredible supposition, absurd in itself that the above exception be overruled, we propose also the exception of illegitimacy of the powers of the plaintiff's attorney, because the powers of attorney, in virtue of which they have brought this suit, are wanting in formalities and requisites which vitiate them to the point of nullity. In fact the power which they invoke and say that Mr. Patrick R. Quinlan has given to them for himself and his cotenant, Mr. Charles M. Warner, is a simple document which lacks the formalities which the laws require for the execution of a power. The other power which they invoke, that is to say, the substitution that appears to be made in favor of the plaintiff's attorneys by Mr. Patrick Sullivan, does not include the representation of Mr. Charles M. Warner, in whose name also the plaintiff's attorneys have brought the said action.

3. The exception of defect of bond or deposit necessary to proceed to a lawsuit. Article 27 of the civil code imposes this obligation on a defendant not domiciled in Venezuela for the payment of what he should be adjudged and ordered to pay, unless he be possessed of sufficient real estate in the country. It is clear that Messrs. Quinlan and Warner are foreigners not domiciled in Venezuela as appears by the complaint itself, and they do not have in the country property with which they may respond to the results of this suit. For another reason the exception of want of security is valid because, although it is true that one tenant in common can appear and represent his cotenant in a suit as plaintiff, article 59 of the code of civil procedure, which grants that right, at the same time obliges the tenant in common to give real or personal security that his cotenant will accept the suit which has been carried on by both. In this obligation is then Mr. Patrick R. Quinlan, who says that he is the coowner, with Mr. Charles M. Warner, in the pretended mine "Felicidad." For the purpose of the deposit we must state to the court that the rash attempt of Messrs. Quinlan and Warner have cost and will cost our mandator for preparatory expenses more than 200,000 bolivares, and all subsequent expenses, up to the judicial decision of this matter.

For the reasons set forth, we petition the court to declare well founded the first of the exceptions opposed, and if there should be opportunity, the second: and the third, with the costs of this incident.

Caracas, April 17, 1901.

CARLOS LEON,
JOSE LORETI ARISMENDI.

(Each one signs over a stamp of 1 bolivar.)

TITLE 7.

SECTION I.—*Of the judicial court.*

ART. 99. The judicial power of the Republic resides in the federal court, in the court of cassation, and in the other judges and tribunals.

SECTION II.—*Federal court.*

ART. 104. The federal court shall be composed of the number of voters which results from the provision in articles 101-102 (ten members).

ART. 105. The law shall regulate the powers of the voters and other employees of the federal court.

ART. 106. The powers o' the federal court, besides those determined by the constitution—and those given by the national codes and the laws of the different States are subject to elections—are the following:

1. To take cognizance of accusations against the President of the Republic, or he who acts in his place, against the ministers of the President, attorney-general of the nation, governor of the federal district, and against its own members for the reasons in which the said functionaries are responsible according to this constitution. In such case it shall join with the court of cassation, both bodies being constituted into a supreme federal court.

SUBDIVISION I.

In this judicial proceeding this supreme tribunal shall declare whether or not there is ground for the process; if it shall declare the first ipso facto the accused functionary shall be suspended from office; if it shall declare the second, all proceedings shall cease. When the nature of the fault shall be a common crime, the business shall pass to the ordinary tribunal. When it shall be of a political nature, the court shall continue cognizance of the matter until its settlement by definite sentence.

SUBDIVISION II.

If the legislative chambers assembled in Congress shall be exercising their functions the declaration of whether there is or not ground for the proceeding belongs to them.

2. To place in State for sentence and decide the causes to which the former subdivision refers.

3. To take cognizance of civil or criminal causes which arise against the diplomatic employees in the cases permitted by the public law of nations.

4. To take cognizance of causes of responsibility of which by the bad performance of their duties arise against diplomatic agents of the Republic credited to other countries.

5. To take cognizance of civil actions when the State shall be sued and the law provides for it.

6. To take cognizance of prize cases.

7. To decide controversies that arise between employees of different States in the political order on the subject of jurisdiction or competency.

8. To declare in the shortest possible time what provision shall prevail in any special case which the proper authority to apply the law shall submit to it within the legal period provided for its decision, either on its own motion or at the instance of the interested party, asking a consultation, inclosing copies of all necessary papers, because it is believed that there exists a collision between the federal or State laws and the constitution of the Republic. However, these proceedings shall not interrupt the course of the action, and if the time for sentence has come and the declaration mentioned by this attribute has not been given, such authority shall act in accordance with what is provided by the code of civil procedure. If the decision is given at the time that the process is in state of appeal, the superior tribunal shall apply whatever is provided by the federal court.

9. To declare which law shall prevail when there shall be a collision between the different national laws or between such laws and those of the States.

10. To declare the nullity of all the acts of the legislative chambers or of the Federal Executive that may violate the rights of the different States, or attack their autonomy, on petition of any of the powers of such States.

11. To declare the nullity of all the acts to which articles 24-25 of this constitution refer, provided they emanate from any national authority or from the federal district.

12. To take cognizance of the controversies resulting from the contracts or negotiations executed by the President of the union.

13. To declare (except in the cases provided in public treaties) the legal value of sentences given by foreign authorities in compliance with the prescriptions of law.

(1) The decisions concerning the attributes third and fourth shall be made by the federal court in conjunction with that of cassation.

(2) The decisions under the fifth, eighth, ninth, twelfth, and thirteenth attributes shall be dictated by a hall formed of the vice-president of the federal court and four voting members of the federal court. In case of appeal, this (the federal court) in conjunction with the court of cassation shall decide the subject by absolute majority of the whole number of both courts. The voters who may have previously rendered a decision shall be substituted in accordance with the organic law. The president shall be the one acting as such in the federal court.

ART. 107. The members of the court once acting can not hold any office from the federal Executive during the period for which they have been elected.

[Translation of the decree of the national constituent assembly found in the Official Gazette, No. 8206, dated April 15, 1901.]

The national constituent assembly of the United States of Venezuela decrees:

ARTICLE 1. The national constituent assembly, by the vote of the majority of all of its members, shall name the President of the Republic and the first and second vice-presidents of the same, who will hold their respective posts until they shall be replaced by those elected according to the constitution.

ART. 2. The provisional president of the Republic shall organize the executive offices in the way most convenient for the public service.

ART. 3. The National Executive is hereby authorized:

(1) To fix the provisional budget for the public expenses, and to take all measures that the constitutional progress of the country shall require in the national administrative order.

(2) To organize provisionally the national public service; to name provisional presidents who shall govern the States until they are organized in conformity to their respective constitutions; to organize the federal district in such manner that it shall at once enter into the enjoyment of the power of autonomy which, in relation to its economical and administrative government, the constitution establishes; and for this purpose the decree of elections for the same for deputies to Congress and members of the municipal council, in conformity with the law of federal elections.

(3) To provide for the examination of the laws and cause to be noted the reforms which are necessary, to the end that Congress shall harmonize these laws with the constitution which has just been issued.

ART. 4. The provisional presidents whom the Federal Executive Power has chosen shall make the organization of their States in all branches of the public administration; they shall call immediately for elections for the constituent assembly, which should be chosen in conformity with the decree of the Federal Executive dated the 3d of October of 1900. However, the presidents of the States, on taking possession of their posts, will declare in force the constitutional laws that were operative in their respective States on the 1st of May, 1899, as long as they are not in opposition to the national constitution.

ART. 5. The constituent assemblies shall assemble on the 1st of June of the current year, shall dictate the constitution of the State, the law of election, and shall organize provisionally the other local offices until they shall be established in conformity to the new constitution, which they shall harmonize with the general constitution of the nation.

ART. 6. The constitutional legislative assemblies of the State on electing their respective senators shall designate by lot those that will hold posts only during the three years in the first legal period, in conformity with the exception of article 37 of the national constitution.

ART. 7. The provisional president of the Republic shall take the legal oath before the national constituent assemblies, and the other functionaries to whom the prior articles refer shall take the oath before the National Executive or the functionary whom he shall designate.

Given in the federal legislative palace, in Caracas, on the 28th of March, 1901, year ninetieth of the independence, forty-third of the federation.

The Presidente,

J. A. VOLUTINI. [L. S.]

The Secretary,

MARIANO ESPINAL. [L. S.]

In the federal palace, the 11th day of April, 1901, year ninetieth of the independence and forty-third of the federation.

Let it be executed.

CIPRIANO CASTRO. [L. S.]

Countersigned:

The minister of interior relations,

J. A. VELUTINI. [Counterseal.]

Certified copy of the judgment of the president of the hall of first and only instance of the federal court, sitting as judge of examination, on the exceptions taken by the constituted attorneys of the New York and Bermudez Company to the action brought by Drs. Nicomedes Zuloaga and Jose de Jesus Paul in the name of Messrs. Warner and Quinlan.

The president of the hall of first and only instance of the federal court as judge of examination, Caracas, May 25, 1901.

Having considered the proceedings, together with the verbal addresses and written conclusions of the constituted attorneys of the parties, on answering the action brought

by Drs. Jose de Jesus Paul and Nicomedes Zuloaga, as the constituted attorneys by substitution of Mr. Patrick R. Quinlan on his behalf and that of his tenant in common with Mr. Charles M. Warner, both of Syracuse, in the State of New York, in the United States of North America, against the New York and Bermudez Company, whose headquarters are in New York, calling upon the said company to admit the validity of the title of the mine "Felicidad," belonging to his mandators, and praying that in case of not agreeing, the federal court should declare the said title valid in conformity with its legal powers, the constituted attorneys of the company sued, Drs. Jose Loreto Arismendi and Carlos Leon took the dilatory exceptions of want of jurisdiction of the court, illegality of the appointment of the plaintiff's attorneys, and the want of security to enable the cause to be heard. They base the first exception on the following grounds: "That the federal court is a special court which can take cognizance only of those matters which are made subject to its jurisdiction by the law which created it; that the constitution which was in force until the 13th of April last, and during the operation of which the action was instituted, enumerated its judicial powers in the text thereof, and left to the laws, according to the first and last sections of article 110 of the constitution, the power to give it other powers; that in virtue of that provision in the constitution the Congresses by their laws gave to it other judicial powers in various matters; that the regulatory law now in force of this high court, in enumerating the powers that as well the constitution as the laws gave to the high federal court included others not given to it by the constitution and the laws which could not be legally done, since a regulatory law has no other object than to settle the procedure of a court; that it is the fundamental laws which settle the extent of the functions and the jurisdiction of the court, which can not exceed that laid down by those laws; and that, finally, article 106 of the constitution now in force provides that the powers of the court are those set out in the said constitution and those attributed to it by the national codes and those of the States in election matters, and it has taken away from the Congress authority to grant to it other powers, and that the subject-matter of the present action is not subject to the jurisdiction of the court by the constitution nor by any of the national codes."

The second exception is based on the ground "that the powers of attorney, in virtue of which they have brought the action, are wanting in the necessary legal formalities and requisites, in consequence of which they are void, and that, in fact, the power which they cite and which they say was given to them by Mr. Patrick R. Quinlan for himself and his tenant in common, Charles M. Warner, is a simple document which is wanting in the formalities required by law for the execution of a power, and that the other power which they cite, that is to say, the power of substitution that appears to be made in favor of the plaintiff attorneys by Mr. Patrick Sullivan, does not include the representation of Mr. Charles M. Warner, in whose name also the plaintiff attorneys have brought the said action." And the third, "on the ground that article 27 of the civil code imposes this obligation on a defendant who is not domiciled in Venezuela for the payment of what he should be adjudged and ordered to pay unless he be possessed of sufficient real estate in the country, and that Messrs. Quinlan and Warner are foreigners not domiciled in Venezuela, as appears from the action itself, and have no real estate in the country to meet the issue of this suit; that the exception of want of surety is also valid because, although it is true that one tenant in common can appear and represent his cotenant in a suit, article 59 of the code of the civil procedure, which grants that right, at the same time obliges that tenant in common to give real or personal security that his cotenant will accept the suit which has been carried on for both; and that Mr. Patrick R. Quinlan, who says that he is tenant in common with Mr. Charles M. Warner of the so-called mine 'Felicidad' is under this obligation."

The attorneys of the plaintiffs duly joined issue on the exceptions taken in the following terms: "The first exception of want of jurisdiction of the high federal court to take cognizance of and decide the action which we have instituted has no ground, for the jurisdiction of this high court is fixed by the regulatory law, now in force, of the said court. Jurisdiction over the matter is determined by the regulatory law of courts and by the special laws according to the textual terms of article 80 of the code of civil procedure, which is one of our national codes. It is not correct that the new constitution has or contains any provision limiting the powers which were attributed to the high court by the former constitution, rather by the terms of article 106 of the constitution it may derive from the national laws new and ample powers.

"It is not juridically correct that the regulatory law of a court has no other object than to settle its procedure, as the defendant attorneys assert, since the regulatory law determines the jurisdiction of the court, nor is the argument admissible that the federal court is a special court, since its powers in matters within its jurisdiction is as regular and ordinary as that of all the courts which constitute the judicial power. For these reasons we join issue on the first exception of want of jurisdiction. We like-

wise join issue on the second exception, namely, that of want of legality in our appointment as the attorneys of the plaintiffs, for it is not true that the powers which make our representation legitimate are wanting in the proper formalities, since that by which Mr. Sullivan substituted us, and which is recorded on folio 24 of these proceedings, was executed to him by Mr. Patrick R. Quinlan for himself and his partners for everything that related to the questions or controversies and claims concerning the mine 'Felicidad' and therefore includes the representation of the said mine, and is proved by the deed of sale which we have annexed to the said action; the said power and the power by which Mr. Sullivan substitutes us are clothed with all the formalities required by article 52, clause 2, book 1, of the code of civil procedure. We have furthermore put in evidence the power which has been granted to us directly by Mr. Patrick R. Quinlan for himself and authorizing us to represent Mr. Charles M. Warner, which was granted in Trinidad before the Venezuelan consul in that island. Finally, we join issue on the third exception of want of surety, in order to proceed to a hearing, because article 27 of the civil code, upon which the attorneys of the company sued rely, relates only to the case of the action turning on or the judgment affecting the payment of a sum of money or the fulfilment of an obligation or the performance of some act, and that here the matter treated of is the declaration of validity or nullity of the title of ownership of the mine 'Felicidad.' Furthermore, the plaintiffs possess in the country sufficient real estate, as is proved by the purchase deed which is recorded in the proceedings of the mine 'Felicidad,' of which they are the owners.

"The preliminary expenses which the lawyers of the New York and Bermudez Company lay at more than two hundred thousand bolivares seem to us to be represented in this suit only by the sealed paper used for engrossing the exceptions. We have no objection to give the proper security to abide the result of the suit if Mr. Patrick R. Quinlan should be asked to give such in order to represent his cotenant, Mr. Charles M. Warner, as the law provides until we are in a position to put in the confirmation of the representation which has been given to us by Mr. Sullivan of his partner, Mr. Warner. The court considering that there were facts on which the parties were not agreed ordered, in virtue of the power given to it by article 264 of the code of civil procedure of the proofs to be put in within the legal time and within the said term the defendants called upon the attorney, Patrick Sullivan, to file his replications, which was done according to law. The pleadings now having been read and all legal requisites on this issue having been complied with the court proceeds to-day to give its decision; and as regards the first exception of want of jurisdiction of the court observes: That having consulted the jurisprudence of the federal system on which the constitution and the legislation of the country are based for the purpose of duly judging whether the said exception is well founded or not, this court is clearly of opinion that the fundamental principle which characterizes it and distinguishes it from other forms of government and determines its special organization is the division of the sovereignty between two entities, one constituted by the powers of the nation and the other by those of the States represented by the respective legislative, executive, and judicial magistracies. "The powers of the nation and those of the States, although both exist and are exercised within the same territorial limits, are nevertheless separated into distinct sovereignties and act separately and independently of each other within their respective spheres." (Faney Ableman V. Booth, 27 How., 516.) This is the doctrine of federal laws understood by North American writers and which must be taken into account in interpreting the political and judicial sense of the federal constitution which have been modeled thereon in this continent.

"From that doctrine proceeds the creation of the national juridical power as the cardinal base of the federation and the existence of the supreme federal court which represents it, and its administration by means of its logical attributes, regulating the two sovereignties, which coexist therein for the maintenance of the national unity as the mercanism which brings the said power into activity. In the light of these principles the allegation made in the issue under consideration that the federal court is a special court is altogether foreign to the nomenclature of the usual qualifications used to characterize it and to determine the nature of its attributes; for the result of accepting such an allegation is that the entity, the nation, would be an exception, and what qualification could be given to the entity the States? Could it be called ordinary? It is therefore seen that we would arrive at phrases which have no value nor judicial meaning and we have already seen how great is the value which the coexistence of the two sovereignties which resemble two autonomous states or two distinct nations has and how great its significance in the Federal Government, and we therefore immediately see the impropriety of classifying the courts of the nation or of the States as special courts. And thus the magistrates of the federal court are not special judges, but the natural ordinary judges of the matters within their jurisdiction, and as natural as those of any other of the courts of the States; but if the federal court were indeed a

special court, its judges would be with greater reason, even more naturally, if possible, the judges, in matters within their jurisdiction; for the existence of the federal court, in such character, could not be conceived nor would it be possible unless based on the special nature of determinate matters or the natural position or hierarchy of certain persons which should render such tribunal necessary in deference to such matters and such persons placed under its exceptional guardianship; and this is treating of the supreme court of the Republic, would manifest the careful prevision of the legislator who desired to offer the best and most efficacious guarantee to such persons and in such matters, and of which they would be undoubtedly despoiled if by an error on the part of the said court, it should declare itself incompetent and should thereby deprive them of being judged by their natural judges.

Hence it follows that both the judges of the nation and those of the States are equally ordinary judges, and both jurisdictions natural and ordinary, each in its own sphere, which can not be trespassed upon nor confounded nor does this proceed from the caprice of any individual legislator nor is it the result of laws passed through malice or thoughtlessness, but is the consequence and outcome of the cardinal principles of the federal system as it appears in the Constitution of the United States of North America, of which Gladstone said, "That it is the most admirable creation produced by a single effort of human mind." And it is from this master work that the federal institutions of Venezuela have drawn their inspiration and to it and to its commentators that this tribunal looks for the light which it needs to duly estimate the point which is judged by the legislation of Venezuela and to pass a just judgment on the present issue. And in order further to consider its bearing from the point of view of the exception of want of jurisdiction in the court which is one of those which gave to it its origin, it is pertinent to copy the following opinions of the American writer already cited who was President of the Supreme Court of the North American Federation. And it is so impossible that the sphere of action appropriated to the nation can be trespassed upon or invaded by a judicial process proceeding from a State court as it would be to cross a line of division traced by posts and walls patent and manifest to the sight (Faney D.). A separation so well marked can not admit, therefore, of discussion in principle, nor in practice if the law is the right application of the doctrine by which, restricting ourselves to the present case, it should include in the sphere appropriate to the nation, among others, principally national matters, and of this the North American Constitution is a good example, that on creating the powers of the Supreme Federal Court it gives it in the second section of Article III that which it thus expressed: "The judicial power of the Supreme Court is extended to all cases of controversy to which the United States may be a party." Brice, one of the greatest authorities on the question, in commenting on the said article expresses himself thus: "This trust is obviously necessary to free the United States from seeing themselves obliged to sue or be sued before a court of a State to which the National Government could not submit."

Perfectly well based on the federal principles and on the article of the North American Constitution already copied, the Venezuelan legislation in considering the question of the validity or nullity of the titles of mines granted by the National Government, regards it as a controversy of a national character belonging to the numerous list of those which are scheduled on the general rule of the American Constitution already cited, and in another, still more general, formulated in the following commentary: "All the cases of federal competency enumerated are those which touch the safety, peace, and sovereignty of the nation, or those which are presumed to be compromising or injurious to the nation, or them the nature of which requires to be jealously watched, or those respecting which importance of the national interests may some time obstruct or restrain the regular administration of justice" (Kent's Commentaries (Holme's edition), Vol. I, p. 320), and hence there is nothing more logically or juridically correct than the power given by the law to the federal court, *to declare the validity or nullity of titles to mines and of waste lands issued by the National Government and which are opposed*, numbered as the 10th in the list contained in the regulatory law of the high federal court, which is not less fundamental because it appears in the said assemblage of laws, since the character of the law in question does not depend on its having one or twenty articles, or in its being found in such or such a code, or in a collection of laws which is or is not called a code, but on the will of the legislator who in a few short lines has made the said provision, as was done in the case under discussion. The law, in whatever code it is met with, is the law and we are bound to observe it until it is repealed. In the present case the regulatory law of the high federal court has not only not been repealed, but the provisional president of the Republic in exercise of the faculties on him conferred by the constituent assembly has declared it to be in full force, and it can not be conceived that the federal court, acting in conformity with that law which actuates and governs, should fail to give effect to any of its provisions, and among

such provisions is the power to declare the validity or nullity of the titles of mines. According to article 99 of the constitution now in force, identical with article 100 of the repealed constitution, the federal court is one of the tribunals in which the judicial power resides, and the code of civil procedure establishes in its second article that the civil courts of the nation are obliged to administer justice both to nationals and to foreigners, according to the said code and the regulatory laws.

Granted the federal system which governs us, the federal court, as has been already said, has been established for the purpose of taking cognizance of questions which from their nature are of the federal order, and when the fundamental law created the said tribunal for the administration of national or federal justice, it is not to be presumed that it wished to derogate from the provisions of articles 2 and 80 of the code of civil procedure, which determine the jurisdiction of the courts, both national and those of the States, by reason of the matter referring it to regulatory and special laws. Regulatory laws complement the public constitutional law of a State or nation, which without them would be a dead letter in various of its provisions, as would happen in the present case if the principle were recognized that a regulatory law can not give powers to a judicial authority of the national or federal order. On the other hand, in the present case, if the federal court were to decline to entertain the case, the absurdity would be produced that the suit which has been instituted would be without a proper judge to whose consideration the proceedings could be brought, in order that he should take cognizance thereof, since jurisdiction is not given to any other court of the Republic, either by the constitution or the laws, to take cognizance of the matter now in litigation, which from its nature is of the federal order, as it treats of the validity or nullity of an act emanating from the federal power.

The federal court is therefore the competent tribunal.

As to the second exception, namely, that of want of legality in the appointment of the plaintiffs' attorneys, this court observes: That there are three powers of attorney affecting this issue, which have been put in by the plaintiffs' attorneys, namely, (1) the power granted in Caracas by Mr. Patrick R. Quinlan to Mr. Patrick Sullivan to represent him and his partners in everything relating to the asphalt mine named "La Felicidad" before all functionaries whatsoever, which power was transferred by Sullivan by way of substitution to Dr. Nicomedes Zuloaga and Jose de Jesus Paul; (2) the power granted by Patrick R. Quinlan before the Venezuelan consul in Trinidad to Dr. Nicomedes Zuloaga and Jose de Jesus Paul to represent him before the Venezuelan courts and every other authority in the country whatsoever in everything relating to the asphalt mine Felicidad, and also empowering them to represent Mr. Charles M. Warner, his tenant in common of the said mine; and (3) the power granted by Messrs. Charles M. Warner and Patrick R. Quinlan in the city of New York, in the United States of North America, to Mr. Patrick Sullivan to represent them in all their real and personal estate in Venezuela, inclusive of the asphalt lake Felicidad, and for that purpose to have power to institute any actions which should in justice be necessary, which power was transferred by way of substitution by Sullivan to Dr. Nicomedes Zuloaga and Jose de Jesus Paul.

The first power was annexed to the action, the second power was put in before the defendants were summoned, and the third when the written replications were filed to the exceptions taken by the defendant's lawyers. Now, the power executed by Mr. Patrick R. Quinlan in Trinidad has been discussed by the parties taking the exception, who allege that it is wanting in the proper formalities and requisites and is therefore void. And although it is certain that the said power suffers from irregularities, the court does not stop to examine them, because it considers them rectified by the putting in of the last power when answering the exceptions and sees no reasons for making an order for costs in this respect against the moving party. Furthermore the validity of the power annexed to the action was admitted by the attorneys of the company sued from the moment they only took the objection that it did not grant the representation of the tenant in common Warner and asked that the security should be given for him which, according to article 59 of the code of civil procedure, should be given by one tenant in common for his cotenant on assuming the representation of the latter as the plaintiff in a suit, and which security the defendant's attorneys agreed to give and immediately gave by virtue of the representation vested in them by the last power which ratified the representation exercised by Quinlan in the name of his cotenant Warner. The power granted by the plaintiffs in New York and put in at the time of answering the exceptions is so clear and precise in its terms that it leaves no doubt respecting the representations of Messrs. Warner & Quinlan. In an incidental way the grantees manifest therein that *they are carrying on business in partnership under the firm or name of Warner-Quinlan Asphalt Company*, but when they grant the representation, they do it in the following terms: "*We name Patrick Sullivan, now resident in Caracas, Venezuela, our true, sufficient, and lawful attorney for us and each of*

us and in our and each of our names and in our place and stead, &c., &c. The court therefore considers this document to have full legal effect for the purposes of the present suit and renders the appointment of the plaintiff's attorneys perfectly legal.

As to the third exception, which is that of the want of necessary security for the suit to proceed the court observes: That the security *judicatum solvi* has always been a guarantee established in favor of the defendant to assure the execution of the judgment passed in the suit not instituted by him to meet the case of the suit proving groundless and inconsiderate. This is consecrated by the legislation of all countries, with more or less restrictions, some establishing this protection only in favor of its national and others giving to it a wider application. The Venezuelan law may boast of being one of the most liberal in this respect, because it establishes this principle of security without any restriction whatever by article 27 of the civil code, which textually says: "The plaintiff not domiciled in Venezuela must guarantee the payment of what he may be adjudged and ordered to pay, unless he possesses in the country a sufficient quantity of real estate." We see, therefore, that our legislation imposes this obligation as much on foreigners as on Venezuelans not domiciled in the country, and makes no exceptions of any kind. Therefore, as the defendants are foreigners not domiciled in Venezuela, and it not appearing that they possess a sufficient quantity of real estate in the country, since the validity of the title of the mine is the subject-matter of the dispute, they can not be exempt from giving the security which is required to enable the cause to be heard. This court administering justice in the name of the United States of Venezuela and by the authority of the law, replying on the preceding reasons, disallows the exceptions to the want of jurisdiction of the court and to want of legality in the appointment of the plaintiff's attorneys taken by the attorneys of the New York and Bermudez Company, and allows the exception to the want of security necessary to be given to enable the cause to be heard, likewise raised by the said attorneys, and the defendants must therefore give the security required by article 27 of the civil code, which this court fixes at the sum of (B. 100,000).

There is no special order as to costs.

P. HERMOSO TELLERIA,
MIGUEL MARMOL, *Secretary.*

Interlineations—limites sido—valen. The subscribing secretary of the political department of the federal court certifies the correctness of the preceding copy. Caracas, May 29th, 1901. The year 90 of the independence and 43rd of the federation.

MIGUEL MARMOL.

(Stamps of 2 bolivares.)

The Secretary of State to Chargé Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, June 21, 1901.

Keep us well informed of facts affecting American interests in the asphalt business.

HAY.

Mr. Russell to Mr. Hay.

No. 638.] LEGATION OF THE UNITED STATES,
Caracas, June 30, 1901.

SIR: I have the honor to inform you that there have been no new developments of late in the asphalt controversy.

The New York and Bermudez Company appealed from the decision of the president of the court on the exceptions taken, demanding that the whole court should consider the points. This is where the case is resting at present.

Mr. Sullivan left some weeks ago to take possession of "Felicidad," but the local judge decided against him—this was cabled to New York as a decision in favor of the New York and Bermudez Company.

I will keep you informed as to progress of this controversy.

I have, etc.,

WILLIAM W. RUSSELL.

Mr. Russell to Mr. Hay.

No. 645.] LEGATION OF THE UNITED STATES,
Caracas, July 14, 1901.

SIR: I have the honor to report that the asphalt controversy is still in the supreme court here on the question of the court's jurisdiction, as reported in my last dispatch on this subject.

Mr. Sullivan, with his lawyer, went to the lake to take possession of "Felicidad" with an order from a local judge. This judge was replaced, and on yesterday the new judge declared Mr. Sullivan's papers out of order and restored the property to the New York and Bermudez Company.

The scene of the battle has been transferred for the last week or two to Carupano, the capital of the State wherein is located the lake of asphalt. Mr. Bean and Mr. Rafferty, of the New York and Bermudez Company, with their lawyer, and Mr. Sullivan, with his lawyer, have all been to Carupano, where the local courts are deciding the question of actual possession. I am keeping well informed of all that is going on in this controversy, but am acting in strict accordance with the last instructions from the Department.

I have, etc.,

WILLIAM W. RUSSELL.

Mr. Russell to Mr. Hay.

No. 660.] LEGATION OF THE UNITED STATES,
Caracas, August 10, 1901.

SIR: I have the honor to herewith forward copy of a letter handed to me by Mr. Bean, the managing director of the New York and Bermudez Company, together with a copy of the last paper filed by the attorneys of said company on the question of appeals, described in a former dispatch.

The process of "recusing" mentioned in the letter from Mr. Bean to me has been instituted, and according to the Venezuelan law the alternates of the original deciding court must pass upon the question.

I have, etc.,

W. W. RUSSELL.

[Inclosure.]

Mr. Bean to Mr. Russell.

CARACAS, VENEZUELA, *August 10, 1901.*

DEAR SIR: I inclose a copy of the last paper filed by the attorneys of the New York and Bermudez Company on the question of the appeals described in my letter to you of the 1st day of June, 1901, now pending before the federal court of this country.

The paper submitted contains a statement of the facts which have occurred since the date of my letter to you, which facts prove conclusively the favoritism of the

[illegible] make necessary [illegible] litigants in the [illegible] authorized by the law [illegible] way provided by [illegible] been the proceeding [illegible] on the question of its [illegible] which I compl[illegible]

[illegible] respectfully yours,

[illegible]

[Subinclosure.]

[illegible] THE NEW YORK AND [illegible]
HIGH FEDERAL COUR[illegible]

[illegible] *of the federal* [illegible]
[illegible] the New York an[illegible]

[illegible] public [illegible] make bor[illegible] volved a [illegible]

nothing to do with the matter of security; that of July 1 orders that the papers of the demanding attorneys, and the demands relative to the application which we have been making to the court to declare to which of the appeals taken the relation which was in course has reference, be added to the expediente, in order that they may be considered in due time; this decision has, moreover, nothing to do with the question of security; and that of July 6 simply says that it has already decided by a decision of July 1 the point in controversy; it is here likewise seen that this latter decision decides nothing with respect to the security.

From this relation it appears that it was the duty of the present court to declare, before continuing in its relation, that the trial was suspended by law, which decision could not be deferred, because it is an absurdity, when it is to be decided whether a trial is to be suspended or not by law, for such decision to be postponed until a matter be terminated or until the trial be terminated. The proceeding followed on this point by the court favors the opposite party by absolute oblivion of what is provided by article 27 of the code of civil procedure, when it says: "The courts shall secure to the parties the rights, privileges, and enjoyments which are common to them, without preference or inequality in the privileges of either, as such privileges are granted by law to the diverse conditions which they may have in the suit. No other extra limitations of any kind shall, however, be permitted."

From the expediente it likewise appears that it was the duty of the court to decide clearly, and not by means of enigmatical decision, as it has thus far been doing, to which of the appeals the illegal relation of autos which has just been declared ended refers. By this proceeding, also, it has established an inequality between the parties.

Still further, General Pachano, a member of the court, having been challenged for a legitimate reason, instead of sending the expediente to the judge whose duty it was, according to article 53 of the organic law, to take cognizance of the challenge, decided it himself, declaring it inadmissible because it had been made at an improper time, although it is a principle and current practice for the judges who are at the foot of the ladder of the judicial hierarchy, that the rule of article 127 of the code of civil procedure which provides that a challenge of judicial officers shall be begun one day previous to that on which the relation is to begin, is inapplicable when the cause reaches that state. Legal rules can not be applied mechanically; that would lead to the Hebrew interpretation which takes no account of the reason for a law, and consequently violates it in seeking to enforce it. By thus upholding an element which the law itself considers must incline to one of the parties the court favors that which is adverse to us,* which is likewise translated into patronage for it.

From all that has been said it is evident that this division of the court has, without realizing it, been lending its support to the party opposed to us, and that, consequently, its members come under clause 9 of article 117 of the code of civil procedure. Thus, then, in obedience to our duty as counsel for the New York and Bermudez Company, we formally challenge all the members composing this division of the court.

Caracas, August 7, 1901.

The court having been challenged in virtue of a legitimate cause, it must proceed in conformity with the provisions of article 54 of the organic law, which says: "When it shall happen that all the members of the court shall be challenged or inhibited, the division of the court in which this shall happen shall order to be summoned the substitutes, or members of the respective nonarias in the established form, and in default thereof, an associate judge from the list of eligibles, making the designation by means of the proceedings above stated, in order that the said associate judge may take cognizance of the case." It is further provided that, owing to the challenge, the court which is challenged is to have no jurisdiction, which, of right, is transferred to the officer who is to take cognizance of the challenge, and he it is who must decide whether the challenge is or is not admissible, and whether it is well or ill founded, and this decision is in nowise to be pronounced by the challenged officer, who, as regards the challenger, becomes the party opposed to him. But that decision of the court which independently declares that it is not properly challenged, is an additional proof of the correctness of the cause on which we base our challenge; and it does not surprise us that the court not only denies us the right of defense which in itself constitutes the most flagrant denial of justice and notorious injustice, but that it can carry its favoritism so far as to pronounce sentence in favor of our adversaries in a case which the law provides shall remain in suspense until Messrs. Warner & Quinlin, as foreigners not domiciled in Venezuela, shall perform the duty of furnishing the security of 100,000 bolivars which has been required of them by this court.

Since in the eyes of the law everything that has been done and that is still being done by this court is null and void by reason of paragraph 6 of article 269 of the code of civil procedure, which says: "A declaration that there is ground for dilatory pleas shall produce the following effects: * * *"

6. A declaration of lack of security shall produce the effect of placing the case in suspense until the security has been furnished; and since the challenge which we have offered of all the members of this court, based upon a legitimate cause, deprives them, ipso jure, of all jurisdiction; and since, finally, the acts whereby the court prevents us from exercising the right of defense by depriving us of the right which we have to speak and of having recorded in the expediente what we say in defense of the company which we represent—all this compels us to abstain from furnishing the information which the court has ordered us to furnish, we protesting against the violations of law which are being committed and which constitute notorious injustice, against which there is no appeal, owing to the constitution of the federal court, it remaining merely for said court to retrace its steps in the exercise of the power given to it by articles 16 and 174 of the code of civil procedure, repairing the infractions and correcting the errors committed in this procedure by replacing the case in the state in which it was when the first infraction was committed.

We here produce the reasons which the New York and Bermudez Company has adduced in arguments against the validity of this trial, on the ground of lack of competency of the federal court to take cognizance of the matter of this suit; which incompetency must be declared at any stage of the case as being a question of public order and one which involves, in this case, an infraction of the national constitution which has restricted the jurisdiction of that federal court to the cases in it established.

C. BRUZUAL SERRA.
MANUEL CLEMENTE URBANEJA.

CARACAS, *August 7, 1901.*

Minister Bowen to Secretary of State.

No. 22.] LEGATION OF THE UNITED STATES,
Caracas, September 20, 1901.

SIR: Referring to the New York and Bermudez case, I have the honor to inclose a copy of a letter sent to me by Mr. Rake, the representative of that company here, and copies of his correspondence with the Venezuelan Government, all tending to prove that the company's principal lawyer, Doctor Serra, whose services are indispensable in presenting the case, was imprisoned in order that the company should be deprived of his services. In view of all the circumstances, I advised Mr. Rake, as I have already informed you, to decline to proceed with the case unless Doctor Serra was permitted to argue it, or until other satisfactory counsel could be engaged. Mr. Rake deemed my advice prudent and wise, and cabled to his directors that he should act accordingly unless otherwise instructed. His directors cabled him to proceed without delay, and make the best possible defense. He will consequently do so.

I have, etc.,

HERBERT W. BOWEN.

[Inclosure.]

Managing director of the New York and Bermudez Company to Minister Bowen.

CARACAS, VENEZUELA, *September 20, 1901.*

On the 24th of August last Dr. Claudio Bruzual Serra, senior counsel of this company, was arrested, allegedly for political offenses, at his home in Los Teques, brought to this city, and placed in the public prison. On September 3 he was removed under bond to the Hospital Vargas in consequence of the delicate state of his health. On the morning of the 18th instant, without previous notice, he was returned to confinement in the public prison, where he still remains.

This company has a cause on trial at present in the high federal court in this city, which involves interests of vast magnitude, and we have relied and do rely on Doctor Bruzual for the proper defense of our interests, for, while we have other counsel associated with him, his intimate knowledge of the details of the litigation, apart from

his known ability, make his services invaluable to us at this time. During his confinement in the public prison we were denied the privilege of consulting him excepting in the presence of official representatives of the Venezuelan Government having no interest whatsoever in our affairs, and while it is true that we were permitted to consult with him during his stay in the Hospital Vargas, he has been returned to confinement in the public prison at the very time of the resumption of the sittings of the high federal court. We have thus been deprived of his services at a most critical moment.

We inclose herewith copies of correspondence with the minister of interior relations, which explains itself. I desire to point out, however, that the letter dated Sunday, the 15th instant, was not delivered to this office until 4.30 p. m. on the 17th instant, and the further inconsistency between the statement of the minister of interior relations to the effects that Doctor Bruzual would be permitted to remain in the hospital until he had regained his health and the fact of his summary return to the public prison on the morning following the receipt of the above-mentioned letter.

We contend that our requests have been reasonable and entirely in accord with the practice in civilized countries in similar circumstances. We submit the correspondence and facts as evidence of a denial of justice, asserting that we have been denied the customary rights of a party to a suit.

We desire to submit further that while we can not present to you substantial proofs in refutation of the alleged cause of Doctor Bruzual's arrest, the correspondence herein referred to, and other incidents which have come to our notice, strongly incline us to the belief that Doctor Bruzual's constant and persistent activity in the defense of the interests of this company formed the real motive for his confinement.

We also inclose copy of a letter addressed to us by Doctor Bruzual on the morning of his arrest, in which he disclaims having any connection with the politics of the country, for reasons which he states therein. From our knowledge of him we have every reason to place the utmost confidence in his statement.

We bring this matter to your notice, believing that the Government of the United States will take a kindly interest in its subjects, and will continue to show the same disposition to have their rights enforced which it has always hitherto evinced.

Yours, very respectfully,

J. L. RAKE.

Director of the New York and Bermudez Company to the minister of the interior of Venezuela.

[Translation.]

CARACAS, *August 26, 1901.*

MY DEAR AND ESTEEMED SIR: Upon matters relating to the defense of the company I represent on a case that is pending before the federal court, it is indispensable to me to have a consultation with Dr. Bruzual Serra, who is detained in the public jail in this city.

I beg you to be pleased to concede to me authority to see the said gentleman, and, as I do not perfectly know Spanish, I would esteem it a favor should such authorization include Señor Manuel Pastor y Mora, an employee of this company, without whom it would be impossible for me to understand Doctor Serra, who in his turn does not possess a knowledge of the English language.

Because it may interest you, I take the liberty of inclosing to you a copy of a letter from Doctor Bruzual, the original of which I hold at your disposition.

I am, etc.,

J. L. RAKE.

Director of the New York and Bermudez Company to the minister of interior of Venezuela.

[Translation.]

CARACAS, *August 27, 1901.*

MY DEAR AND ESTEEMED SIR: Your very courteous communication of this date has just reached me, and in acknowledging its receipt I am pleased to express to you my thanks for your activity in replying to my petition.

The many duties necessary to the taking charge of the management of a company of the importance of this one has prevented me, as yet, from presenting personally my respects to the authorities of this beautiful country, as the representative of my

company and from advising them by that means, that in the absence of Mr. Henry Willard Bean, I have taken his place. I believe that, nevertheless, I shall be able to carry out this purpose before much time passes.

In the meantime, and begging that you will excuse the trouble, I should esteem the favor if you would note my name and would inform me what hour and what day would be most appropriate for me to begin to make use of the conceded authorization.

I am, etc.,

J. L. RAKE.

The minister of interior of Venezuela to Mr. Bean, director of the New York and Bermudez Company.

[Translation.]

Personal.]

CARACAS, *August 27, 1901.*

MY DEAR AND ESTEEMED SIR: Advised of the contents of your courteous letter of the 26th instant, I hasten to transmit the orders in the case, so that you may, as you desire, in the protection of your interests, visit the public jail to confer with Dr. Bruzual Serra, accompanied by your interpreter, the Government directing that the official interpreter of the ministry of foreign affairs, Señor Absueta, shall also be present, who will be the one who will translate the conference between you, as also Señor Alcaido, prison keeper, to whom the respective orders will be intrusted in order that you may have no inconvenience of any kind.

And it is proper to make known to you that the Government accords you from now on authority to visit the jail for conference with Dr. Bruzual Serra each time that you may judge advisable for the interests of the company which you represent in this city, since the aforesaid Doctor Serra is arrested for reasons of public order.

I am, etc.,

J. A. VELUTINI.

Minister of interior of Venezuela to the director of the New York and Bermudez Company.

[Translation.]

Personal.]

CARACAS, *August 27, 1901.*

DEAR AND ESTEEMED SIR: Advised of the contents of your valued letter of the 26th instant, I hasten to transmit the orders in the case, so that you may, as you desire, in the protection of your interests, visit the public jail to confer with Dr. Bruzual Serra, accompanied by your interpreter, the Government directing that the official interpreter of the ministry of foreign affairs, Señor Abzueta, shall also be present, who will be the one who will translate the conference between you, as also Señor Alcaide, prison keeper, to whom the respective orders will be intrusted in order that you may have no inconvenience of any kind.

And it is proper to make known to you that the Government accords you from now on authority to visit the jail for conference with Dr. Bruzual Serra each time that you may judge advisable for the interests of the company which you represent in this city, since the aforesaid Doctor Bruzual is arrested for reasons of public order.

I am, etc.,

J. A. VELUTINI.

Director of New York and Bermudez Company to the minister of interior of Venezuela.

[Translation.]

CARACAS, *August 29, 1901.*

MY DEAR AND ESTEEMED SIR: I have the pleasure to acknowledge the receipt of your valued letter of the 27th instant, and I hasten to express my deepest thanks for your prompt and courteous response. I fear, nevetheless, that it will be difficult for me to avail of the amiable offer it contains.

I can not but think that after mature rèflection you will appreciate that the conditions which your letter imposes make it impossible for me to treat the subject as my interview requires with Dr. Bruzual Serra. I have the honor to state to you, General, that the personal relations that exist betwen the said doctor and myself are of such a character only so far as they affect the interests of the company that I represent and that they have no personal interest for Doctor Bruzual.

The purpose of my projected visits to Dr. Bruzual Serra is exclusively to discuss with him the points relating to the defense in the litigation affecting this company, and which is before the nigh federal court, and it is not desirable that persons who have nothing to do with the litigation be present.

I trust that in view of these assurances you will have the goodness to modify the restrictions which you have imposed upon me, so far as to grant me the requested permission to confer in private with Dr. Bruzual Serra, an act which, I believe, is accorded under the established practice of other countries in similar circumstances.

With assurances, etc.,

J. L. RAKE.

The minister of interior of Venezuela to the director of the New York and Bermudez Company.

[Translation.]

Personal.] CARACAS, *August 29, 1901.*

MY DEAR SIR: I have the pleasure to advise you of the receipt of your valued letter of the 27th ultimo.

From the present moment you may make use of the authorization to which I referred in my former letter.

With consideration, etc., J. A. VELUTINI.

Director of New York and Bermudez Company to the minister of interior of Venezuela.

[Translation.]

CARACAS, *September 3, 1901.*

MY DEAR AND ESTEEMED SIR: The 29th of the month just past I had the honor to ask of you certain modifications in the kind authorization to confer with Dr. Bruzual Serra in the public jail, contained in your valued favor of the 27th, basing (my request) on reasons the importance of which can not escape your recognized intelligence.

Not having received a reply to the aforesaid letter, and the matters which I have to consult with Doctor Bruzual being most urgent, referring, as I had the honor to state to you, to the defense of the company in the litigation now before the high federal court, I take the liberty, General, to renew to you the petition contained in my aforesaid letter to confer with Dr. Bruzual Serra in private through the medium of Mr. Pastor y Mora as interpreter.

Pardon, General, my insistence, due to the urgency and importance of the case, and accept, etc.,

J. L. RAKE.

Director of New York and Bermudez Company to the minister of interior of Venezuela.

[Translation.]

CARACAS, *September 7, 1901.*

MY DEAR AND ESTEEMED SIR: I have understood that Dr. Bruzual Serra, being transferred to the Vargas Hospital, definite orders have been given that Dr. M. C. Urbaneja can not see him without an express order from the governor of the federal district.

Dr. M. C. Urbaneja being one of the operators of the company which I represent, and having to discuss with his companion and our principal lawyer, with the greatest urgency, most essential points in the defense of the case at a moment when the time approaches for the reply of a very important claim before the high federal court, I would esteem it a favor, Mr. General, if you would expedite for Dr. M. C. Urbaneja, as well as myself and Mr. Pastor y Mora, who would act as interpreter, a permanent authorization by the proper authority to enable us to confer with Dr. Bruzual Serra.

Also I would esteem it a favor if to avoid any doubt you would have the kindness to answer me with the greatest brevity conceding to me the aforementioned authorization.

I am, etc., J. L. RAKE.

Director of the New York and Bermudez Company to the minister of interior of Venezuela.

[Translation.]

CARACAS, *September 11, 1901.*

MY DEAR AND ESTEEMED SIR: The 16th instant, recess being ended, the functions of the high federal court will again be in force and assuredly the matter relative to the company I have the honor to represent will be among the first subjects with which the said high court will be occupied.

I do not think it necessary, Mr. Minister, to advise you that the subject referred to is of such importance to the company that we need to be represented in due form, desiring, therefore, that Dr. Bruzual Serra, as our first and oldest lawyer, shall represent us before the high federal court.

We hope and believe that the Doctor will be able to personally represent us for that time, the more so since I have understood that he has given a considerable bond; and in any case I trust that while our case occupies the sessions of the court Dr. Bruzual Serra will be permitted to assist personally and to carry on, in conjunction with his companion, the company's defense.

I renew, etc., J. L. RAKE.

Director of the New York and Bermudez Company to the minister of interior of Venezuela.

[Translation.]

CARACAS, *September 13, 1901.*

MY DEAR AND ESTEEMED SIR: Even at the risk of troubling you too much, I feel obliged to recall to your attention my letter of the 11th instant, in which I had the honor to set forth the particular situation in which the company I represent is placed in order to defend its interests before the high federal court, as regards the detention suffered by Dr. Bruzual Serra, and in which I respectfully asked the authorization, Mr. Minister, that our principal and old lawyer should represent us personally before the high federal court.

Time passes; it is the 13th, and the 16th is the probable date when the reply will take place to the claim interposed against the company I represent. It is necessary, owing to the enormous responsibility that falls upon me as representative of the New York and Bermudez, that I should know, Mr. Minister, what to rely upon in this matter, and in renewing to you the petition contained in my last letter I urge upon you an immediate reply.

I am, etc., J. L. RAKE.

Minister of interior of Venezuela to the director of the New York and Bermudez Company.

[Translation.]

Personal.]

CARACAS, *September 15, 1901.*

MY DEAR AND ESTEEMED SIR: I am in receipt of your letter of the 13th instant, and in reply I have to state to you that Dr. Bruzual Serra is still imprisoned for the reasons set forth in my letter dated the 27th of last August, and that if he is to-day in the Vargas Hospital, it is because the Government, bond being given, has consented as an act of benevolence to his transfer to that establishment while he is recovering from the broken health from which he now suffers.

Yours, etc., J. A. VELUTINI.

Doctor Serra to Mr. Rake.

[Translation.]

LOS TEQUES, *August 24, 1901.*

MY ESTEEMED SIR AND FRIEND: Since yesterday I have been advised by the civil authorities of this city that, by order of the governor of Caracas, I am arrested, the reason not being explained. I do not know to what to attribute this unexpected measure, but I can assure you that it can not rest on any political cause, since I live completely apart from the politics of my country, because of the state of my health, as well as because such action is imposed on me by the interests of the New York and Bermudez Company, of which I am the counsel.

I have thought it proper to place this information before you.

I am, etc.,

C. BRUZUAL SERRA.

Mr. Hill to Mr. Bowen.

No. 18.] [DEPARTMENT OF STATE,
Washington, September 27, 1901.

SIR: I have to acknowledge the receipt of your No. 17 of the 17th instant.

It appears therefrom that Doctor Serra, attorney of the New York and Bermudez Company in its pending litigation in Venezuela, has been "imprisoned for alleged political offenses;" that the Venezuelan Government has forbidden intercourse between him and his associate counsel engaged by said company in said litigation, and has otherwise set obstacles in the way of the free and confidential communication between client and counsel which is essential to the defense of individual rights and to the impartial administration of justice.

The prevention, by direct or indirect methods, by the Venezuelan Government of the untrammeled exercise by the New York and Bermudez Company of its right to employ its own local counsel, and the placing of any obstacles whatever in the way of such counsel in the advocacy of its cause in accordance with the laws of Venezuela and the usuages and procedure of the courts could not fail to produce the most painful impression on the Government of the United States, as being in contravention of the plainest principles of justice. And if upon careful investigation, which you are authorized in your discretion to make, the facts should clearly lead to the conclusion that such methods have been resorted to by the Venezuelan authorities for the purpose of deterring Doctor Serra or any other Venezuelan lawyer from espousing the cause of said company and from the fearless exercise of his entire lawful freedom, as counsel in behalf of his client, you may communicate said facts to the Venezuelan Government, together with your conclusion thereon and advise it that this Government could not otherwise regard it than as a palpable breach of international law and as having the possible effect of vitiating any judgment adverse to said company through its having been obtained in manifest denial of justice.

Such conclusion, however, is not one lightly to be drawn and should only be asserted on evidence, direct or circumstantial, of a cogent and convincing character. The evidence should be carefully gathered, considered, and weighed with a judicial mind in the light of all the antecedents and circumstances in the case.

In the conduct of the litigation in a foreign state between American citizens there is no hard-and-fast rule defining the attitude of this Government. It is not less its duty to defend the cause of justice when it has been clearly ignored and denied, when American citizens happen to be the opposing parties, than when those of one side are of an American and those of the other of a foreign nationality. This may be imperatively necessary in the interests of justice, since it may happen that the real parties in interest on the one side are nominally Americans, but really foreigners; or it may happen that American citizens having vested rights of property, foreigners may set up a false claim thereto and then transfer the claim to Americans with a view to preventing the intervention of this Government, in the event of denial of justice, on the ground of the American citizenship of both the adverse parties.

The Department of State has followed the rule of refraining from giving legal advice to its citizens engaged in litigation in a foreign state. It has adopted this rule as one of convenience, not only because the function of guiding and directing their litigation belongs to their private counsel and the responsibility for such advice does not properly devolve upon the Department of State. It only advises them of the general rule observed by the Government in such cases, that where adequate remedies are afforded by the local tribunals for the determination of conflicting claims to private property such remedies should be sought and exhausted before resort to the diplomatic forum. This rule, it is believed, may be safely and judiciously observed by our ministers, as it might save them from the embarrassment which might result if their advice in any case should turn out to be erroneous.

In the opinion of the Department, it is prudent for ministers, having regard to their essentially diplomatic functions, in all cases to refer questions of law or of legal advice to the Department for instructions, making the Department responsible for the advice given if it should lead to consequences of an unforeseen and possibly embarrassing character.

As the Department has not fully instructed you heretofore in these particulars, it now takes the liberty to supply that omission, and it would be pleased if you might communicate its views in this respect to Mr. Rake, the representative of the New York and Bermudez Company.

I am, etc., DAVID J. HILL.

Minister Bowen to the Secretary of State.

No. 26.] LEGATION OF THE UNITED STATES,
Caracas, October 4, 1901.

SIR: I have the honor to inclose a copy of the cablegram I sent you on the 2d of this month in regard to the asphalt controversy and to inform you that I summoned the representatives of the two parties to this legation and urged them to advocate the settlement of the entire question by the parties themselves, or by arbitration, because I felt satisfied that neither party is sure of getting justice here and because I believed that if injustice were done trouble would result that might bring the United States and Venezuela into serious conflict and cause the people of the latter (who are not in the least responsible for what has been going on here since General Castro became President) to cease to regard the people of the United States with special favor and affection.

The policy of the United States, as I understand it, is to endeavor in every reasonable way to acquire and retain the friendliness and good will of our sister American republics, and indeed of all the nations. In conformity with that policy, all citizens of the United States having controversies abroad should, when possible, settle them at home. In this asphalt controversy the only place where a satisfactory settlement can be made is at home. Here the conditions are not favorable for securing a fair and impartial trial. I have, consequently, done what I could to induce the parties to remove the

case from the Venezuelan courts to New York. The views of the representatives here of the asphalt companies are now in accord with mine, and I sincerely hope that they will be supported by the Department of State and be accepted by the companies themselves.

I have, etc.,

HERBERT W. BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *October 2, 1901.*

I have had a consultation with the representatives of both parties to the asphalt controversy, and I have urged them to have the whole matter settled amicably in the United States. Both of them stated that they approved of the idea and authorized me to suggest to you that you advise both parties in New York to enter into an arrangement among themselves, or, if that is not possible, to submit the whole matter to arbitration. On the consent of the parties in New York all proceedings will be at once stayed here.

BOWEN.

Minister Bowen to the Secretary of State.

No. 27.] LEGATION OF THE UNITED STATES.

Caracas, October 5, 1901.

SIR: I have the honor to herein inclose documents which the managing director of the New York and Bermudez Asphalt Company has requested me to forward to you.

I am, etc.,

HERBERT W. BOWEN.

[Inclosure.]

Managing director of the New York and Bermudez Company to Minister Bowen.

CARACAS, VENEZUELA, *September, 30, 1901.*

We inclose herewith copies of our correspondence with the minister of interior relations of the Venezuelan Government, supplementing that forwarded to you with our letter of the 20th instant.

In our letter of the 29th of August to the minister of interior relations, we had already demonstrated clearly that we should not be expected to hold consultations with our counsel in the presence of official representatives of his Government. For in all reason they could not be interested in such matters as we might have occasion to discuss. These affairs, as we personally assured the minister, were solely related to the litigation now being conducted by this company before the courts of this country.

If Doctor Bruzual's activity in defending the interests of this company does not constitute the active motive for his arrest and continued incarceration by the Venezuelan Government, we fail to see how it can justify its attitude in continuing to deny us those rights in the relationship between attorney and client which are recognized throughout the civilized world.

We venture to express the belief that the further documents herewith submitted will confirm the opinion recently expressed by us that, in a flagrant manner, we are denied justice and common right.

Yours, very respectfully, J. L. RAKE.

Director of New York and Bermudez Company to Minister Bowen.

CARACAS, *October 2, 1901.*

Inclosed herewith we hand to you copy of a protest which Dr. Manuel A. Ponce, one of our counsel, was compelled to file in the superior court of Cumana, State of Sucre, on the 26th of September last. The flagrant violations of the provisions of the con-

stitutions of the federation and State, of the code of civil procedure, and of the organic law of tribunals are so clearly set forth in the protest, certified copy of which we have in our possession, as to require no further comment on our part. We deem it of importance, however, that we should place before you the details surrounding this most recent evidence of the application of "Venezuelan justice," in order that you may arrive at a full and clear understanding of the incident.

Early in August of the present year, Pedro M. Brito Gonzalez, provisional president of the State of Sucre, was called to Caracas, and it was freely rumored here that he then received official instructions to urge the superior court in Cumana to arrive at a decision adverse to this company prior to the annual legal vacation beginning August 15. He returned to Cumana, leaving Caracas on the morning of August 7. Our representatives in Cumana, Dr. Manual A. Ponce, Maj. Malcom A. Rafferty, and Carlos Dominguez O., have evidence of the repeated and persistent efforts on the part of Provisional President Brito to coerce the court into reaching a decision prior to August 15. These efforts, however, proved unsuccessful.

At the expiration of the thirty days' vacation the court resumed its sittings on September 16, and the proceedings continued with decorum and due regard to the provisions of the code of civil procedure until the 21st day of September, when the court had completed its labors and it was announced that a decision would be rendered on the morning of September 23.

On September 21 Provisional President Brito sent for Julio Cesar Cova Gomez, vice-president of the superior court, and demanded from him information as to the decision to be rendered by the court, and that the written decision should be submitted to him before being read in court. Cova declined to submit the written decision, but informed him that as a result of their deliberations, the president of the court, Andres A. Betancourt Rubio and he (Cova) had concluded on a decision in favor of the New York and Bermudez Company, in accordance with the facts.

We may here mention that while Provisional President Brito is in retirement, in accordance with custom, during the elections, and General E. Carrasco is nominally the acting provisional president of the State of Sucre, it is well known in and around Cumana that all matters of public and official interest are directed by Provisional President Brito.

On Sunday, September 22, Provisional President Brito was in consultation with the chancellor of the court, Miguel Maiz. Señor Maiz absented himself from the sessions of the court on the 23d and 24th, giving illness as a pretext, thus preventing action by the remaining two members of the court.

Major Rafferty called upon the acting provisional president, General Carrasco, on the morning of the 24th, and reminding him that the legal period having expired, and the court having been prevented meanwhile from rendering a decision, owing to the absence of one of its members, requested him to say, if possible, when the future sittings of the court would be held. General Carrasco promised to inquire into the matter and advise Major Rafferty later what could be done. During the afternoon of the same day, Major Rafferty repeated his inquiry and was informed by General Carrasco that "by the following morning, September 25, arrangements would be made for the court to sit and bring the action to a proper conclusion."

On the morning of September 25, Major Rafferty again called on General Carrasco at the court-house, his official office, and was informed by Gen. Juan Ignacio Aranguren, secretary of the State of Sucre, who was permitted to carry on the conversation for General Carrasco, that "the Government had dismissed the entire court and had appointed a new court; that the Government had its own reasons for so doing;" General Aranguren further stated, voluntarily, that "the Government was not disposed to inform us as to its reasons for dismissing the court." In reply to a further question, Major Rafferty was informed that the new court would assemble for the reconsideration of the case on October 3, 1901.

After the appointment of the new court had been announced, Betancourt Rubio and Covo Gomez, the two members of the original court who had continued to attend the sessions regularly up to the time of their announced dismissal, were ordered to report daily at the house of the provisional president of the State, and to be prepared to go to Caracas by the Dutch steamer which was to sail a few days thereafter. They did not leave Cumana on that vessel, for the simple reason that these men fully realized what their call to Caracas meant to themselves and their future liberty and had gone into hiding.

The collector of customs at Cumana, Gen. Reveron Garcia, has been instructed by Provisional President Brito to take every precaution to prevent the two judges in question from escaping from Cumana, and special precautions were adopted to prevent their boarding the steamship *Viking*, the property of this company, which sailed from Cumana on the 30th ultimo. This information was conveyed to Major Rafferty direct by the collector of customs.

None the less significant is the fact that four cablegrams of grave importance, concerning the litigation in question, addressed to the writer and filed in the office in Cumana on the 25th and 26th ultimo, were not delivered in Caracas until noon of the 30th. An important telegram on the same subject, sent over the Federal line on the 25th ultimo, has not been delivered at this writing. Interruptions in line service can scarcely be set forth with accuracy, as a reason for the detention and suppression of the messages of this company, inasmuch as we have evidence of uninterrupted communication between parties other than ourselves, between the same points, on the same dates.

I have, etc., J. L. RAKE.

[Translation.]

Citizen Vice-President of the State of Sucre, in charge of the Presidency:

I, Manuel Antonio Ponce, a lawyer, resident of Caracas and transiently in this city, respectfully represent to you, in my capacity as attorney for the New York and Bermudez Company: The status of the litigation in course between Messrs. Warner and Quinlan and the company represented by me and the safeguarding and efficiency of its rights make it necessary that I lay before you a representation as follows: Section 3 of article 14 of the constitution of the State, following the national constitution, guarantees the right not to be tried by special tribunals or commissions, but by one's national judges and by virtue of existing laws. Under article 79 of the said constitution of the State, one of the courts in which the judiciary power of the State resides is the superior court, to which is now submitted the solution of the important and far-reaching interlocutory action instituted by Messrs. Charles Warner and Patrick R. Quinlan against the New York and Bermudez Company. In the service of its functions the said court took cognizance of the case on appeal, made its report upon it, heard the evidence, and prepared its decision. After five years of unjustified delay, and when the announcement of the sentence was looked to, we were surprised by the dismissal of the said court on the 25th instant. The dismissed judges had to be appointed in accordance with the provisions of article 80 of the constitution of the State, declared to be in force since the 24th of June last. The same article provides that the supreme and the superior courts shall consist of three active members each, and shall be appointed according to clause 22 of article 27 of the said constitution, so that the president of the State may elect the active members from the list of nine, chosen for the purpose, such members on the said list as have not been so elected remaining as substitutes in their numerical order. It is clearly stated in the said provisions that when disabilities, permanent or temporary, of any or all of the members of the said court, the president of the State can only elect those who are to fill the vacancy from the list of those who remained as substitutes at the time of the first constitutional election.

In addition to my belief that the judges who had charge of the case could not be superseded, especially when the decision was near at hand, without a compliance with the forms of law required in the premises, the choice for the new judges could only fall upon those inscribed on the list of substitutes, for the executive of the State is without authority to appoint, at his discretion, members of the judiciary after the latter has been organized in conformity with the law unless he follows the procedure mapped out by the same law for the purpose. This much for an examination of the question under this constitutional régime now in force. If it be now observed that we are undergoing a provisional period of transition, it must be borne in mind that while the provisional president is authorized to organize the public powers of the State, provisionally, under the decree of the constituent assembly, dated June 14 last, that official, in his decree of the 24th of the same month, declares, at its article 2, that in regard to such a provisional organization of the public powers all the laws that obtained in the state on the 1st of May, 1899, remain in force, in so far as they are not in opposition to the constitutions of the nation and of the State; and among those laws we find the organic law of tribunals sanctioned by the constituent assembly of the State of Sucre on February 16, 1899. That law provides that the justices of the superior court and their substitutes shall be appointed in the manner set forth in the constitution (art. 16); that the president, reporter, and counselor will remain in possession of their offices for one year and can be reelected (art. 19); that in cases of permanent or temporary vacancies among the justices of the supreme and superior courts by reason of death or removal the legislature or the president of the State shall fill such vacancies by appointing, for such time as may remain to complete the term, the substitute or substitutes, as the case may be, from the list of such substitutes (art. 35), and, article 27 provides that the substitutes shall be ordered by him to serve; also in cases of suspension, even though such suspension may be applied as a penalty.

There results from the foregoing that the appointment of the new officers of the superior court could not be made lawfully, and granting that there may have been good cause for the dismissal of the incumbents, the forms of law in the case should have been complied with and the substitution been made in accordance with the constitution and the laws declared to be in force in the State.

If it be argued that there is some decree or other by which the employees are declared to be "on commission," such a decree could in no wise have referred to members of the judiciary. For it could affect none but employees controlled by the Executive power, and those of the judicial power are appointed in conformity with the constitution, on which they depend, and therefore can not be removed at will by the Executive. In view of the magnitude of the interests for which the company I represent is suing and of its desire to exhaust all lawful means in the defense of its rights, it has directed me to lay the foregoing representation before you, to point out the irregularities herein adverted to and to declare that if it accepts the jurisdiction of the new court it will be out of respect for the decision of the power and under protest against such proceedings and with reservation of the rights that it may have to exercise in the form and through the channel best adapted to its interests.

I pray that you may be pleased to consider this representation as having been made and to cause a certified copy thereof to be delivered to me. Cumana, September 26, 1901. Manuel Ant. Ponce. United States of Venezuela. State of Sucre. Office of the Secretary-General. Cumaná, September 26, 1900. 91 and 43. Delivered this day at 10 a. m. Juan I. Aranguren.

A copy certified correct.

The Secretary-General. JUAN I. ARANGUYEN.

United States of Venezuela, State of Sucre, Office of the Secretary-General of the Provisional Presidency of the State Cumaná, September 27, 1901, 91 and 43.

L. P. A., No. 913.]

Citizen Dr. Manuel Antonio Ponce, present:

The following resolution is a reply to the document presented by you to this office under date of yesterday:

United States of Venezuela, State of Sucre, provisional presidency of the State, Cumaná: September 27, 1901, 91 and 43: *Resolved*. After examination of the foregoing written protest made before this Government by the Citizen Dr. Manuel Antonio Ponce, attorney of the New York and Bermudez Company, with respect to the decree of the 24th instant, by which members were appointed on the superior court of the State, it is remarked that the reasons on which the said protest rest are inadmissible, for the executive of the State has full knowledge of his powers and, in the case in point, proceeded in conformity with the provisions of section 2 of article 3 of the decree passed by the constituent assembly on the 14th June last, and ordered to go into operation on the 14th of the same month. The laws in force in the State, which are the same as obtained on May 1, 1899, can not have the same rigorous application as they had then, for the very reason that during that constitutional period the public powers acted independently of one another by virtue of the laws under which they were organized, while at present all the said powers are creatures of the executive, on which they shall depend directly until the legislative assembly meets. As regards the right of this Government to appoint the members of the superior court, a mere perusal of the above-cited section 2 proves that that is the very ground upon which the executive based the decree issued on the 16th instant by which he declared all the public appointments in the State to be "on commission," there being no rule of law in opposition thereto.

So true is this that the same citizen, Doctor Ponce, declares in his document "that if it accepts the jurisdiction of the new court, it will be out of respect for the decisions of the power," thereby tactily recognizing the right of the Executive to make such appointments and the legality of that court, for no sound judicial and constitutional doctrine can conceive submission to the jurisdiction of public officials whose decisions carry nullity in themselves on account of faulty and illegal origin. And whereas the said citizen, Doctor Ponce, alleged in addition that the superseding of members of the court should be effected according to the letter of articles 16, 19, 35, and 37 of the organic law of tribunals in force, it is because he is not aware that there are not at present "monarias" (lists of nine) made up by the legislature as required by the latest constitution, and that the appointments of active and substitute members of the courts can not at present be made in conformity with article 87 of the constitution of the ancient State of Sucre, after which the other complementary laws were made. If, then, the Government can exercise its free choice in the appointment of the said principal and substitute justices, it is an easy inference that it can change them whenever it sees

fit, provided its decisions are in accord with the essential points of the law. Let the requested certified copy be delivered. Let this be communicated and published. E. Carrasco. The secretary-general, Juan I. Aranguren.

By order of the general, second vice-president in charge of the presidency, I send you a copy of your information. God and Federation.

JUAN I. ARANGUREN.

Branch office of the registrar of the district of Sucre, Cumaná. September 28, 1901.

The foregoing documents were presented to me by Citizen Carlos Domingurez Olivarría, who, I attest, is known to me and read and subscribed the protocols before me and Luis F. Romera, who both know him; they have been entered under No. 64 of their series, protocol 1, corresponding to the third quarter of the current year, stamps amounting to 10 bolivars having been canceled on the duplicate.

The registrar.

J. MANUEL ALIN.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, October 7, 1901.

Your telegram copied to both parties to the asphalt controversy and both refuse to arbitrate as suggested.

ADEE, *Acting.*

Minister Bowen to the Secretary of State.

No. 29.] LEGATION OF THE UNITED STATES,
Caracas, October 9, 1901.

SIR: I have the honor to acknowledge the receipt of your No. 18, of September 27 last.

I am decidedly of the opinion that I could not possibly obtain any evidence that would justify me in complaining to the Venezuelan Government that its action in imprisoning Doctor Serra was in contravention of the principles of justice. The Venezuelan Government has suspended all individual guaranties under the constitution, and makes such arrests as it deems necessary for the preservation of public peace and order. It ordered the incarceration of Doctor Serra because it claimed to possess evidence that he was complicated in a political plot. I am sure that it would be useless to ask for the production of that evidence, and I know that it could not be secured otherwise.

The views that you asked me to communicate to Mr. Rake I presented to him shortly after my arrival here. I told him frankly that I could not give him any official advice without your consent, but that I should always be glad to give him or any other American private advice when desired. He clearly understood me, and in every instance has referred what I have said to his directors in New York in order that they might confer with you before taking action.

I have, etc., HERBERT W. BOWEN.

Minister Bowen to the Secretary of State.

No. 30.] LEGATION OF THE UNITED STATES,
Caracas, October 18, 1901.

SIR: I have the honor to inclose herein a copy of a document filed in this legation by Mr. Rake, the representative here of the New York and Bermudez Asphalt Company. As I have already stated to you, the Venezuelan Government has suspended all individual guarantees under the constitution, and I infer that the couriers between Carupano and Guanoco are considered by this Government to be persons who should be watched carefully; and I hardly think that our interference at this juncture would be productive of much good. It would seem as if the best course to pursue would be to let the case proceed until a final judgment is rendered. All the proceedings can then be properly examined. The result of our constantly claiming that the procedure here is defective or irregular would be that the courts and Government would complain that our interference was unwarranted, and derogatory to their independence. I judge from what the minister for foreign affairs told me privately last night that the Venezuelan Government will ultimately claim that if there has been any illegality of procedure it was due to the fact that various judges were bribed, and had to be replaced by others. Consequently, I am of the opinion that we should not attach too much importance to the peculiar methods of procedure here, but should decide to judge the case on its merits.

I am, etc., HERBERT W. BOWEN.

[Inclosure.]

Managing Director of the New York and Bermudez Company to Mr. Bowen.

CARACAS, VENEZUELA, *October 17, 1901.*

Referring to our communication to you of the 2d instant, and as clearly foreshadowed therein, the superior court in Cumana, State of Sucre, against the violent and illegal methods of the appointment of which we have protested and continue to protest, convened on the 3d instant for the hearing of the cause for which it was appointed, and with remarkable haste reached sentence on the 8th instant in favor of the claimants of the pretended mine "La Felicidad," by the terms of which the action is remanded to the court of first instance in Carupano. The effect of this decision is to continue the "articulation" as opened in the court of first instance in Carupano on the 24th of June last, and in accordance with the clearly defined plan to give our adversaries possession of what is actually our property, acquired under the Hamilton concession, by land and mining titles, and by prescription rights. On the same day, October 8, our attorney, Dr. Manuel A. Ponce, renewed his protest and gave formal notice of appeal to the supreme court of the State of Sucre, in Cumana. This appeal was favorably received on October 9, and the decision of the superior court is now under review in the supreme court of the State of Sucre, in Cumana. Certified copies of these proceedings are now in the hands of our Mr. Rafferty.

Meanwhile, on October 4, the composition of the supreme court in Cumana had been changed by the arbitrary order of the provisional president of the State of Sucre, Pedro M. Brito Gonzales, in utter defiance of the provisions of the Federal and State constitutions, the code of civil procedure, and the organic law of tribunals, by the dismissal of the regular members of the court and the substitution of persons selected to subserve the official will, whose names are not to be found on the official list of "suplentes" (substitute judges). Our attorneys have been instructed to make formal protest against this further perversion of legal procedure when the proper time arrives.

We are subjected to constant annoyance in the pursuit of our business operations in the east, officials of the Government, doubtless acting under instructions from

their superiors, openly charging this company with aiding revolutionary plotters against the Venezuelan Government, a charge which we emphatically and most positively deny, and our Mr. Rafferty reports that our couriers between Carupano and Guanoco have repeatedly been held up and our letters opened and read, notwithstanding the fact that these employees were properly provided with passports.

We feel that the Government of the United States, on whose protection we are compelled to rely, can not look with indifference upon these frequent infringements of law and common justice, when the interests of any of its citizens are at stake.

Yours, very respectfully,

J. L. RAKE.

The Secretary of State to Minister Bowen.

No. 27.] DEPARTMENT OF STATE,
Washington, November 1, 1901.

SIR: I have to acknowledge the receipt of your No. 30, of the 18th ultimo, inclosing a letter from Mr. Rake, managing director of the New York and Bermudez Company, complaining of the action of the Venezuelan Government in changing the judges of the various courts in which their litigation is pending, and also of the detention of the company's couriers (although furnished with regular passports) and the examination of the correspondence carried by them.

You add that you are not in favor of protesting at this juncture, but think the case should be allowed to proceed to its conclusion and then be reviewed in its entirety.

Your views are approved.

I am, etc., JOHN HAY.

Minister Bowen to the Secretary of State.

No. 45.] LEGATION OF THE UNITED STATES,
Caracas, November 17, 1901.

SIR: I have the honor to inclose herein a copy of the letter I sent, in conformity with your instructions, to the Venezuelan Government in regard to the arrest of Dr. Bruzual Serra, a translation of its answer, and a copy of my letter acknowledging the receipt of its answer.

The correspondence to which reference is made is that which is in the possession of the Department.

I am, etc., HERBERT W. BOWEN.

[Inclosure No. 1.]

Minister Bowen to the Minister for Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, November 11, 1901.

Mr. MINISTER: My Government has instructed me to inform you that it has learned with deep regret that the New York and Bermudez Company has practically been deprived of the services of Dr. Bruzual Serra by reason of his imprisonment, and of the order issued by your Government preventing the representative of the New York and Bermudez Company from consulting freely and confidentially with him. As you are well aware, the suit to which this company is a party is one of great importance and perplexity. Doctor Serra was selected because of his eminent ability as a counsel and as an advocate, and he made a long and thorough study of the case. Just as it came on for trial, he was seized and imprisoned for alleged political reasons. He, however, as-

sured the representative of the company that he was in nowise connected with, or interested in, any movement against the Government, and, owing to the very bad state of his health, it is more than reasonable to infer that he spoke the truth. At all events, unless the very clearest proof of his culpability was in the hands of your Government, it would seem as if he should have been allowed to continue to discharge his very important duties to the company, if for no other reason than that the very friendly relations that exist between the United States and Venezuela should be zealously maintained, and that no cause of complaint should be given by one Government to the other. But, regrettable as his imprisonment seems to us, even more inexplicable and unusual was the refusal of your Government to permit the representative of the company to consult with him privately in regard to matters relating to the litigation. The right of direct and confidential communication between client and counsel is one that is recognized by all civilized states, and should never be denied, or the reason for so doing should be extraordinarily clear and adequate. As no official explanation of the course of your Government in this matter has been made to this legation, I have the honor to respectfully request your excellency to state as comprehensively as possible the grounds upon which your Government has based its action.

I gladly avail myself, etc.,

HERBERT W. BOWEN.

[Inclosure No. 2.]

The Minister for Foreign Affairs to Minister Bowen.

[Translation.]

MINISTER OF FOREIGN AFFAIRS OF THE
UNITED STATES OF VENEZUELA,
Caracas, November 16, 1901.

Mr. MINISTER: Careful consideration has just been given by the Government to your excellency's note of the 11th in regard to the arrest of Dr. Bruzual Serra for reasons of public order. So much the more thorough has been the investigation made in accordance with your request, because, from the beginning, the President has taken into consideration those friendly sentiments which your excellency expresses and which are the same that animate the Government of this Republic; but at the same time due regard had to be paid to the internal laws of the country, in the carrying out of which no explanation is required for acts arising from the imperative duty of taking every precaution for the preservation of the peace.

The action of your excellency is based upon the mere fact that the prisoner was acting for the New York and Bermudez Company. But if your excellency, with that fine sense of justice to which you subordinate all you conclusions, will overlook for a moment the connection and relationship which by a simple accident exists between the company and its lawyer, and will consider him, as the Government has been obliged to consider him, as a person subject like any other to the jurisdiction of the country, the President is sure that your excellency would not have seen in the proceeding against Dr. Bruzual Serra anything except the justifiable and natural use of powers conferred by the law on him who has to guard the public safety in conformity with his official responsibilities.

Proof having been furnished the Government by the ministry of internal affairs of the complicity of Dr. Bruzual Serra in projects contravening public order, and that, too, at a time, as your excellency knows, when the Government had to suspend certain constitutional guarantees, the act of arrest could not be regarded in any light as strange in character, inasmuch as neither here nor in other cultured States is there any irregularity in taking means to prevent public disturbances and to ward off dangers from the National Administration. This alone would suffice as a justification of the course of the Government in not judging it necessary to present beforehand to the company the slightest explanation regarding the arrest, because otherwise, as your excellency will readily understand, in every case the duty or necessity would arise before depriving a person of his liberty, for reasons of public order, of inquiring into the kind of private interests that might be affected by the act, whereby reasons of public safety would be subordinated to the demands of private interests.

I inclose for your excellency, to be returned, the correspondence between the minister of internal affairs and the director of the New York and Bermudez Company after the arrest of Dr. Bruzual Serra.

The willingness of the Government in consenting that the arrested party could communicate with the representative of the company in the presence of an official

interpreter will convince your excellency that everything was done to reconcile the necessities of the company with the general reason for the arrest; even now this can not be done, for, in view of recent occurrences, the Government has considered it to be absolutely necessary to treat Dr. Bruzual Serra exactly the same as other persons lately arrested for reasons of public order.

With the greatest respect I submit to your excellency the foregoing considerations, feeling sure that you will see from them the great interest taken by the Government of the Republic to preserve its friendly relations with the legation so worthily represented by your excellency.

Accept, etc., J. R. PACHANO.

[Inclosure No. 3.]

Minister Bowen to the Minister for Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, November 17, 1901.

Mr. MINISTER: I have the honor to acknowledge the receipt of your courteous communication of the 16th instant in regard to the arrest of Dr. Bruzual Serra, and to inform you that I shall forward a copy of it to Washington, where, I am sure, the arguments you advance will receive due consideration.

I return to your excellency the correspondence that passed between the minister of internal affairs and the managing director of the New York and Bermudez Company, and I thank you for your kindness in permitting me to peruse it.

Accept, etc.,

HERBERT W. BOWEN.

Minister Bowen to the Secretary of State.

No. 48.] LEGATION OF THE UNITED STATES,
Caracas, November 30, 1901.

SIR: I have the honor to herewith forward a copy of a protest filed in this legation as to a further refusal of the Venezuelan authorities to permit the representatives of the New York and Bermudez Asphalt Company to have reasonable intercourse with the attorneys of said company.

I am, etc., HERBERT W. BOWEN.

Managing director of the New York and Bermudez Company to Minister Bowen.

CARACAS, *November 21, 1901.*

We beg to hand to you herewith copies of correspondence which we have recently had with the minister of interior relations of the Venezuelan Government on the subject of a further refusal to permit our representatives to have reasonable communication with the attorneys of this company.

We might be inclined to attribute the attitude of the officials at Cumana solely to overzealousness in the performance of duty were it not for the fact that our legal representatives were treated in a similarly discourteous manner at the same port a short time before.

On October 23 last Dr. Manuel A. Ponce, one of the attorneys of this company, sailed on the Holland liner from La Guayra for Carupano, intending to confer with another of our attorneys, Dr. Celestino Farrera, at Cumana, and to deliver to the latter the necessary instructions for formulating and presenting the appeal to the supreme court of the State of Sucre in the interdictory suit brought by Messrs. Warner & Quinlan. On the arrival of the vessel at Cumana, Doctor Ponce was not permitted by the local authorities to go ashore, nor was Doctor Farrera allowed to board the vessel. On the other hand, Doctor Mendible, the local attorney of Messrs. Warner & Quinlan at Cumana, was permitted to board the vessel for the purpose of consulting with Mr. Patrick Sullivan and Dr. Felix Montes, representatives of Messrs. Warner & Quinlan.

That the recurrence of these annoyances is not attributable to accident may be circumstantially explained by recalling the fact that the officials of this particular port are directly under the orders of Dr. Pedro M. Brito Gonzalez, to whom extended reference was made in our communication to you of October 2 last.

Yours, etc., J. L. RAKE.

Director of the New York and Bermudez Company to the minister of the interior of Venezuela.

I, James Lewis Rake, managing director of the New York and Bermudez Company in this city, most respectfully beg to submit to you:

The company which I represent has in its service a small steamboat called *Viking*, of which it makes use for the affairs necessary to its mining exploitations in the State of Sucre, and to the maintenance of its rights in the suits which have been brought against it in the courts of Venezuela.

I am informed that through the medium of his employees in Cumana the president of the State of Sucre, Dr. P. M. Brito Gonzalez, prevented any communication taking place between the *Viking*, at anchor in the harbor, and the city of Cumana between the 10th and 12th of this month, in such wise that it was impossible for the employees of the company who were on board to communicate with the company's lawyer on shore; and said employees have informed this office that telegrams should not be addressed to them in Cumana or Carupano, owing to the foreknowledge that permission may be refused by the authorities to have them brought on board the *Viking*.

Inasmuch as these facts constitute a serious injury, involving vast interests, which at any moment may become irreparable, in view of the affairs and defenses which are under the management of this company, I address myself to the National Executive, through your worthy office, in order that it may become aware of that which has happened, and to request it, as I do respectfully request, that it will order that the necessary steps be taken to avoid such inconvenience to the company which I represent, which is solely desirous of furthering its industry as heretofore and of maintaining its legitimate rights before the courts and within the limits of the law.

I request that a certified copy of this petition and of the resolution which may be passed in regard thereto be granted to me. It is justice I seek in Caracas.

November 13, 1901.

J. L. RAKE.

Minister of interior affairs of Venezuela to the director of the New York and Bermudez Company.

CARACAS, *November 16, 1901.*

The representation made by you on the 13th instant having been considered by this office, answer is made thereto by the following copy of a telegram which has been addressed to it by the administrator of the maritime customs of Puerto Sucre:

CUMANA, *November 12, 1901.—6 p. m.*

MINISTER OF THE INTERIOR:

In the fulfillment of my duty I have the honor of sending you copy of a communication which I have just addressed to the consul of the United States of North America in this State, in regard to the incident which occurred in connection with the steamer *Viking* of the New York and Bermudez Company.

No. 835.] PUERTO SUCRE, *November 11, 1901.*

Citizen JOSE G. NUMEZ ROMERO,
Consul of the United States of North America, Cumana:

The North American steamer *Viking* of the New York and Bermudez Company, reached this port at 6 a. m., coming from Carupano, where it is well known that there have recently appeared cases of smallpox. This is an alarming piece of news which naturally caused the first authority of the State of Sucre, Dr. Pedro M. Gonzalez, to take just precautionary measures to protect the public health, among others that of forbidding the entrance of vessels coming from said port, or else submitting them to a temporary quarantine in Puerto Escondido in accordance with the sanitary regulations prescribed by the board of health. In consequence of this, in my capacity of administrator of this maritime customs and with the further quality of captain of the port, I sent a peremptory order to said vessel through Customs-House Comman-

dante Louis Guzman Villanueva that it should submit to the legal enactments already mentioned, and I gave authority to this employee to fulfill my instructions by proceeding in the custom-house boat, to be kept at a convenient distance.

I regret to have to inform you that it was due to repeated requests addressed to J. Dalton that he withdrew to the quarantine station indicated, but he returned to the harbor at 12 o'clock with the intention of anchoring and taking on board Dr. Celestino Farrera, attorney of the company. This is a serious disregard of definite orders courteously given, which would have been carried into effect with disgrace and ridicule of the authority which I exercise in this port, above all, with an unpardonable lack of respect for the glorious flag of the fatherland which was at that moment hoisted above the custom-house, and for the meritorious name of the present Chief of the Nation, if the decided and energetic action which I took in the fulfillment of my duty had not been interposed in these circumstances. The steamer finally left the port, its destination being unknown, but without having carried any intention into effect. The obedience to the laws of the land and the respectful consideration of the Government of Venezuela which have suffered by this incident are weighty reasons which make me appeal to you, that you will call these events to the attention of your superior. I repeat the expression of the high and distinguished esteem in which I have always held the representative of that great nation in this important State of the Venezuela Union. God and the Federation, J. Garcia Reveron.

God and the Federation,

GARCIA REVERON.

(Delayed owing to interruption.)

God and the Federation,

J. A. VELUTINI.

Director of the New York and Bermudez Company to Minister Velutini.

[Translation.]

CARACAS, *November 20, 1901.*

DEAR SIR: Acknowledging the receipt of your communication of the 16th instant, numbered 1706, I beg to append translation of a report made to this office by our manager, Maj. Malcolm A. Rafferty, and General Agent E. M. Cravath, jr., of the details of the recent incident at Cumana, which formed the subject of my representation to you under date of the 13th instant:

CARUPANO, VENEZUELA, *November 12, 1901.*

J. L. RAKE, Esq.,
Managing Director, Caracas, Venezuela.

DEAR SIR: We beg to draw your attention to the following facts in regard to the last trip of the steamship *Viking* to Cumana, and to request that you put this matter before the proper authorities in order to prevent a recurrence of this outrageous discourtesy imposed on the New York and Bermudez Company's American steamship *Viking*.

In pursuance of the legitimate business of the New York and Bermudez Company, the company's steamship *Viking* was cleared from Carupano for Cumana on Sunday, the 10th instant. At the time of clearing the ship we were informed by the proper authorities that the bill of health with which the authorities provided us would be quite sufficient to insure free practique.

We were informed by the cashier of the custom-house, who boarded the steamship *Viking* on her arrival in Carupano on Saturday, November 9, that notwithstanding the acknowledged existence of two isolated cases of smallpox, the port authorities of Cumana had officially informed the corresponding officers of Carupano that bills of health issued by the authorities in Carupano would insure the entering of vessels in Cumana.

This same statement was made to us on inquiry by Doctor Riquena, the interventor and acting administrator of the custom-house in Carupano. Relying on this information, we anticipated none of the difficulties which we encountered as hereinafter shown.

The *Viking* reached Cumana at 6 a. m. on the 11th instant, having on board as passenger, in addition to ourselves, Capt. A. B. Wallower, also an employee of the company.

With unusual promptness a custom-house official came within long speaking distance of the *Viking* in the custom-house boat, flying the Venezuelan national flag. Immediately on getting within speaking distance of the *Viking* he delivered the following message: "No hay puerto para ustedes." We then asked why there was no port for us, and the reply was very promptly made, "By order of the president of the State."

We requested this official to examine our papers and ascertain the circumstances under which we left Carupano, and at the same time see for himself whether we were duly authorized to enter. In reply to this request we were instructed to go to an anchorage about a mile away and anchor near a falucho, then at anchor, and which we afterwards ascertained to be the *Pilcomayo*, and that on our compliance with these instructions a health officer would visit us.

The object of our visit to Cumana being to take the company's legal representative, Dr. Celestino Farrera, from Cumana to Carupano, we requested that Doctor Farrera be permitted to come within speaking distance, and that a more responsible port authority than the one with whom we were then dealing should confer with us.

In compliance with the instructions of the customs officer, we immediately went to the anchorage indicated, the customs officer returning to the shore with the customs-house boat.

Having reached the place and anchored near the falucho referred to above, we were again visited within hailing distance by the same customs officer, who informed us that we would not be allowed to confer with Doctor Farrera, that we would not be accorded an examination by the medical board, and that we were ordered to go to Escondido Bay, where a Government officer connected with the customs would attend to us. We requested the name of the Government officer at Escondido Bay, and were informed that it was Gregorio Gonzales. We still insisted on our right to communicate with our agent, and the customs officer told us that Doctor Farrera would be allowed to come in the customs-house boat to Escondido Bay and speak with us. He also stated that the customs boat would follow us to our new anchorage within half an hour.

On arrival at Escondido Bay we used the usual customary methods of attracting the attention of the Government officers, and waited patiently for the officer who we had been informed would visit us, but none appearing, we lowered the ship's small boat, and rowing within speaking distance, we made inquiry and discovered that there was no Government officer at the place, and that we had, therefore, been grossly misled by the statement of the customs officer at Cumana.

After waiting fully three hours we decided to return to Cumana and endeavor to ascertain the meaning of such deception and discourtesy. On reaching Cumana we did not anchor, and when we saw the custom-house boat approaching us we awaited her arrival. The boat came within hailing distance, and on this occasion it had on board, representing the Government, Señor Guzman Villanueva, Commandante de Resguardo, who ordered us to leave the port immediately, and that if we did not do so we would have to take the responsibility of our act in staying there. This we considered to be a threat, inasmuch as, at the same time, a detachment of soldiers was brought down to the end of the jetty apparently prepared to make an attack on our steamer. These threats were quite unnecessary, as we did not attempt nor had we the intention nor desire to do anything that was not strictly in accord with the laws of Venezuela, but we did expect such privileges as would be accorded us in any part of the civilized world.

We again insisted on our right to confer with our agent; we had no intention whatever of violating any of the reasonable laws of the port, nor would we do so in conversing with our agent, or in taking him on board under proper quarantine regulations, as we would certainly not endanger the contamination of the port, even if it was possible for such a danger to exist.

We were given no opportunity to secure new clearance papers of any description, but we were given the option of remaining forty days in the Escondido Bay to ride out our quarantine, as we were informed by Mr. Villanueva, or of returning to the high seas without proper papers, thereby endangering us to the penalties for which a ship is liable which is not provided with such papers.

The foregoing states all the communication we had with Cumana, and on our return to Carupano the authorities received us and treated us as though we had not been away from the port.

This occurrence has been a menace to the interests of the company and a discourtesy to the flag the *Viking* carries, as well as an impediment to commerce which should not be expected in a port of any civilized country.

Yours, truly,

(Signed) MALCOLM A. RAFFERTY, *Manager*.
(Signed) E. M. CRAVATH, Jr., *General Agent*.

The representatives of this company can not and do not expect the abrogation of port regulations for their accommodation, but in view of the clearance papers and bill of health carried by the steamship *Viking* on this occasion, we submit that the requests of our representatives were quite within reason and moderation. The refusal of officials at Cumana to permit communication of any kind whatsoever between our

representatives and attorney was not only extraordinary, but of serious consequence to this company in the conduct of its legal affairs. Moreover, it is not the first instance where opportunity for communication and consultation between the representatives and attorneys of this company has been denied to us at the port of Cumana.

Sincerely trusting that the necessity for further complaint may be avoided, I remain, dear sir,

Yours, etc., J. L. RAKE.

Mr. Bowen to Mr. Hay.

No. 54.] LEGATION OF THE UNITED STATES,
Caracas, December 15, 1901.

SIR: In answer to your No. 33, of the 3d instant, I have the honor to inform you that Mr. Rake, the representative here of the New York and Bermudez Asphalt Company, will sail to-morrow for New York in order to consult with his company and explain to it what has taken place here during the last few months, and I think that he will probably go to Washington, and will explain, among other things, to you the attitude of the Venezuelan Government toward Doctor Serra. As you do not give me specific instructions to communicate to the minister for foreign affairs, your dissatisfaction with his answer to my note about Doctor Serra, I am of the opinion that I had better not address his excellency again on the subject until you have conferred with Mr. Rake.

I have learned from a private source that the Venezuelan Government has some proof that Doctor Serra, like nearly every other prominent man in Venezuela at the present time, is opposed to the Government of General Castro; that General Castro considers him a political prisoner unworthy of enjoying the usual rights of a citizen; and that, at first, General Castro regarded my note as a very offensive act of interference with the internal policy of Venezuela, and would have had it answered very sharply if two members of his cabinet who are friendly to this legation had not urged him to make a courteous answer to me. I may further say that General Castro is not disposed to favor us in any way, and would be very glad to avail himself of any opportunity he may have to make it known that we are inclined to impose upon him and that he is strong enough to check us. In view of these circumstances, I feel that I ought always to obtain specific instructions from you before taking any step that might afford him a chance to give any further proof of his ill will toward us. He feels especially sore at present, as the press here has announced that we are not disposed to oppose any action that Germany may take to force Venezuela to satisfy her claims.

I have, etc.,

HERBERT W. BOWEN.

The Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 23, 1901.

Report by wire present status of the asphalt controversy.

HAY.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *December 23, 1901.*

A decision was rendered on the 18th by the court of first instance in Carupano in favor of Warner & Quinlan. On that day Bermudez appealed to superior court of Cumana. Pending appeal, Warner & Quinlan have taken possession of asphalt lake, as final appeal must come to Caracas.

BOWEN.

Minister Bowen to the Secretary of State.

No. 57.] LEGATION OF THE UNITED STATES,
Caracas, December 28, 1901.

SIR: At the request of Mr. J. L. Rake, managing director of the New York and Bermudez Asphalt Company, I have the honor to herewith forward copies of affidavits in regard to the Venezuelan Government's interference with the employees of the above-mentioned company.

I am, etc.,

HERBERT W. BOWEN.

[Inclosure.]

I, Jose Antonio Romero, solemnly and sincerely declare as follows:

I am an employee of the New York and Bermudez Company in the capacity of messenger. By instruction of the company's agent at Carupano, Venezuela, I left that place on the 29th of September, 1901, carrying a dispatch addressed to the company's superintendent at Guanoco, Venezuela, and left provided with a passport signed by the jefe civil of Carupano, Hipolito Herrera, giving me safe conduct from Carupano to Guanoco.

I reached the town of El Pilar on the 30th of September, 1901, and was there arrested by the jefe civil of El Pilar, Baldemero Ortiz, and the dispatch of which I was the bearer was taken from me, opened, and read by the said jefe civil of El Pilar.

I was locked up and detained a prisoner until October 2, 1901, and was then released and handed the dispatch which had been taken from me and given permission to proceed to Guanoco.

I was detained at El Pilar on account of antagonism of the Venezuelan Government officials at that place to the New York and Bermudez Company, and for the purpose of, by detaining the company's dispatches, injuring the business of the said company.

The passport which I carried was taken away from me by the jefe civil of Guariquen and can not be procured.

I make this declaration conscientiously, believing the same to be true and according to the statutory declarations ordinance 1876, and I am aware that if there is any statement in this which is false, in fact which I know or believe to be false or do not believe to be true, I am liable to fine and imprisonment.

JOSE A. ROMERO.

Declared at No. 18 Brunswick square in the town of Port of Spain, in the island of Trinidad, this 8th day of November, 1901; interpreted in the Spanish language after being first sworn, by E. M. Cravath, jr.

I, Geronimo Vincentelli, solemnly and sincerely declare as follows:

On the 29th day of September I dispatched from Carupano, Venezuela, with letters for Joseph Perry, superintendent of the New York and Bermudez Company, resident at Guanoco, a messenger by name Jose Antonio Romero.

The said messenger left for Carupano on the 29th of September, duly provided with a passport signed by the civil chief of Carupano, Hipolito Herrera, and was

taken prisoner and confined in prison in El Pilar, a village on the— to Cuanoco, by the civil chief, Baldemero Ortiz.

He was detained until the morning of the 2d, and the letter he was carrying was taken from him, the seal broken, and the letter read. I was informed by telephone by one Pedro Rondon of the fact and went immediately to the collector of customs in Carupano, who is also chief military authority of the region, Gen. Aristides Fandeo, and also to the above-mentioned civil chief of Carupano, and after much persuasion succeeded in getting an order for Romero's liberation, which was by telephone, and also forwarded by a military messenger to Pilar.

He was liberated on the morning of the 2d of October and allowed to proceed on his journey. I am certain this illegal and unwarranted violation of private business correspondence and persecution is due to the enmity and ill will which is borne against the company almost unanimously by the residents in the neighborhood..

I make this declaration conscientiously, believing the same to be true and according to the statutory declarations ordinance 1879, and I am aware that if there is any statement in this which is false, in fact which I know or believe to be false or do not believe to be true, I am liable to fine and imprisonment.

JERONIMO VINCENTELLI.

Declared at No. 18, Brunswick square, in the town of Port of Spain, in the island of Trinidad, this 8th day of November, 1901. Interpreted in the Spanish language after being first sworn by E. M. Cravath.

E. M. CRAVATH, Jr.

The Acting Secretary of State to Minister Bowen.

No. 39.] DEPARTMENT OF STATE,
Washington, January 7, 1902.

SIR: I have to acknowledge the receipt of your No. 54, confidential, of the 15th ultimo, suggesting that no further action be taken in the matter of the New York and Bermudez Asphalt Company until Mr. Rake, managing director of the company, shall have conferred with the Department.

In reply I have to say that the Department approves your suggestion.

I am, etc., DAVID J. HILL,
Acting Secretary.

Minister Bowen to the Secretary of State.

No. 67.] LEGATION OF THE UNITED STATES,
Caracas, February 9, 1902.

SIR: At the request of Mr. J. L. Rake, managing director of the New York and Bermudez Asphalt Company, I have the honor to herewith forward copies of correspondence between said director and the Venezuelan Government in regard to the arrest and imprisonment of said company's assistant counsel.

I am, etc., HERBERT W. BOWEN.

[Inclosure No. 1.]

Managing Director of the New York and Bermudez Company to the Minister of Interior Relations.

NEW YORK AND BERMUDEZ COMPANY,
Caracas, Jauuary 25, 1902.

MY DISTINGUISHED GENERAL AND FRIEND: Information has just reached this office announcing the imprisonment of Dr. Manuel Clemente Urbaneja.

It is not my purpose (although this incident has deeply impressed me, not only on account of the esteem in which we held Doctor Urbaneja, but for the value we place

upon his superior legal knowledge) to occupy your attention with disagreeable protests, which we endeavor to avoid, as our Mr. Pastor y Nora has had the honor to inform yourself as well as General Castro, President of the Republic, himself, but we desire to know, and it is essential that we should know, in accordance with the line of conduct we have pursued and the categorical instructions which we have given to every person giving his services to this company, whether Doctor Urbaneja has failed to fulfill our wishes.

Our sincere feelings of respect toward the established Government and our absolute abstention from everything referring to the politics of the country make it indispensable that you should have the kindness to give reply to this request at your earliest convenience.

Thanking you in advance, I am, General,

Yours, etc., J. L. RAKE, *Managing Director.*

[Inclosure No. 2.]

Minister of interior relations to the managing director of the New York and Bermudez Company.

MINISTRY OF INTERIOR RELATIONS,
Caracas, January 27, 1902.

MY DEAR SIR AND FRIEND: I answer your esteemed letter of yesterday by informing you that Dr. Manuel Clemente Urbaneja has been imprisoned on account of his having been complicated in revolutionary movements.

I avail myself of this opportunity to renew to you my good wishes.

Yours, etc.,

J. A. VELUTINI.

The Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 1, 1902.

Reported that Carupano court about to dispossess New York Bermudez Company illegally and notwithstanding its appeal to the court of cassation. If necessary take prompt and vigorous action to prevent such measures until you investigate and report for further instructions.

HAY.

Minister Bowen to the Secretary of State.

[Telegram.]

Confidential.] CARACAS, *April 3, 1902.*

Referring to your cable instructions, I addressed to Venezuelan Government vigorous letter objecting to proceedings court Carupano giving order of possession of disputed asphalt mine to opponents New York and Bermuda Company. I characterized proceedings as irregular, illegal, and intolerable, for the whole case was now on appeal from Carupano and Cumana to court cassation here. Court Carupano had no jurisdiction of the case after it was taken away on appeal.

I had personal interview yesterday with minister for foreign affairs and handed to him (my) said letter, repeated its contents, and stated that if lower court of Venezuela usurps rights court cassation the country is in a state of anarchy. A cabinet meeting was held and the President refused to interfere with the judiciary, claiming he had

no power. I consider said proceedings outrageous, insulting, and defiant, and I advise, if possession is actually obtained under said illegal order by the opponents of Bermuda Company, that the United States proceed at once to blockade the ports of Venezuela and take such further action as may be necessary.

Further discussion here useless. BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

Confidential.] CARACAS, *April 5, 1902*

I have had two conferences with lawyers of Warner & Quinlan. They claim they are absolutely right in trying to obtain possession of asphalt mine under the Carupano order, but they have cabled their client not to try to take possession, but to return here, owing to vigorous action of this legation and probably by advice of the Venezuelan Government.

BOWEN.

No. 79.] LEGATION OF THE UNITED STATES,
Caracas, April 7, 1902.

SIR: I have the honor to report that on the 28th of March last Mr. Rake, the representative here of the New York and Bermudez Company, filed at this legation a letter, a copy of which is herein inclosed (No. 1), informing me that the representative of Warner & Quinlan had petitioned the court of first instance at Carupano for possession of the asphalt mine called "La Felicidad." I had a talk with Mr. Rake about the matter and advised him to ascertain whether or not the court of cassation, to which the case had been carried on appeal from Carupano and Cumana, had the power to revoke the order of possession issued at Carupano and to stay all proceedings thereunder. Mr. Rake's lawyer reported to me that the court of cassation has no power to revoke an order of a lower court until it is brought before it in certified form. The lawyer then stated that on the 29th of March the court of Carupano had issued to Mr. Quinlan the said order of possession. I thereupon advised Mr. Rake and his lawyer to lay the matter personally before President Castro. Within a few hours after having given that advice I received your cablegram (a copy of which is herein inclosed, marked No. 2), instructing me to prevent the order of possession from being carried into effect until I could investigate and report. In compliance with those instructions I addressed to the minister for foreign affairs a letter (a copy of which is herein inclosed, marked No. 3), and I delivered it to him in person on the morning of April 2, explaining carefully and emphatically my objections to the order of the court of Carupano. At the same time I impressed on him the fact that neither my Government nor this legation has any interest whatsoever in this asphalt controversy, except to see that the most ample and perfect justice is accorded to both parties, and I concluded by stating that, in my opinion, the Government of the United States would not be satisfied unless the status quo is maintained in all respects until the court of cassation renders its final decision. The

interview, owing to the very friendly relations that exist between the minister for foreign affairs and myself, was unusually frank, and he promised to have a cabinet meeting called that afternoon to consider the contents of my letter.

The following morning I received from him his answer (a copy of which is herein inclosed, marked No. 4), stating, as I expected, that the President refused to interfere with the action of the judiciary. I thereupon sent to you a cablegram (copy of which is herein inclosed, marked No. 5).

On April 4 I received a call from the lawyers representing here the Warner-Quinlan Company, and they filed with me a paper (copy and translation of which is herein inclosed, marked No. 6), virtually protesting against my action in opposing the execution of the order of the court at Carupano. We discussed the question quite exhaustively, and when they saw that they could not alter my attitude they most insultingly accused me of being an attorney for the Bermudez Company and of acting as such. I should have been perfectly justified in ordering them out of the legation, but I concluded that it would be better to refer to the matter when they were less excited. I could not, however, forego the pleasure of asking them how it happened that they had become acquainted with the details of my private conversation with the minister for foreign affairs. The question embarrassed them very much, and the only excuse they gave was that what I had said had been discussed at a cabinet meeting.

On the following morning, April 5, I called on the senior attorney of the Warner-Quinlan Company, and told him that I should resent any further insulting remarks that may be made to me, and then I explained to him also that the only object of my Government and this legation is to protect the legal interests of both companies alike, and that, in case injustice is done to the company he represents, I shall be most pleased to assist him most vigorously in obtaining relief. He then informed me that he had cabled, after leaving me the day before, to his client, Mr. Quinlan, not to try to take possession of "La Felicidad," but to return here. In view of the importance of this statement, I called at once upon Mr. Rake and advised him to cable to his representative at the "Felicidad" mine that Mr. Quinlan had been advised to return here and not to try to take possession of the mine. On my return to the legation I sent you a cablegram (copy of which is herein inclosed, marked No. 7), stating that the lawyers of the Warner-Quinlan Company had cabled to their client the advice I have just mentioned. I have no doubt that their action was taken after they had become convinced that they could not intimidate me and after they had confided that conclusion to the Venezuelan Government.

The law bearing on the case is stated in inclosure No. 6, and in inclosure No. 8, which was furnished to me by the lawyers of the Bermudez Company. My opinion of the case is clearly stated in my cablegram, inclosure No. 5, and I most decidedly believe that our proper course here is not to make any demands of this Government unless we are willing to back them up by force if necessary. I am hoping now that there will be no further trouble until at least the court of cassation renders its judgment and we take it up for review.

I have, etc.,

HERBERT W. BOWEN.

[Inclosure No. 1.]

The Managing Director of the New York and Bermudez Company to Minister Bowen.

MARCH 28, 1902.

SIR: Through cable advices received through Dr. Celestino Farrera, an attorney for this company, we are advised that the representative of Messrs. Warner & Quinlan petitioned the court of first instance at Carupano on the 26th instant for possession of the pretended mine "Felicidad" by public force.

We desire to call your attention to the fact that the possessory suit brought by Messrs. Warner & Quinlan early in 1901 before the courts at Carupano has been contested by this company, at all times with due regard for the law and established usages of the tribunals of this country, through the several courts of the State of Sucre, and, notwithstanding the fact that the civil authorities of that State have, in defiance of the constitution, the code of civil procedure, and the organic law of tribunals, violently substituted judges of the higher courts and have otherwise openly committed hostile acts to the serious annoyance and detriment of our interests (matters that have formed the subject of previous representations to you), until, finally, by decision of the superior court at Cumana this company was granted recourse to the court of cassation at Caracas, the highest court of appeal in the nation, where the entire "expediente" now lies and the case is under review. Meanwhile, the main question is still on trial before the federal court at Caracas.

The legal representatives of this company and other eminent legal authorities familiar with Venezuelan law whom we have consulted assure us that it is quite without the power of the judge of any court to give consideration to a case where the "expediente" is without the jurisdiction of his court, and that the present action at Carupano is absolutely without legal motive, contrary to law and procedure, and without precedent in the trial of causes under the laws of this Republic. That the lower court at Carupano should have entertained such a motion while the case is on review before the court of cassation of the nation simply furnishes another link in the chain of evidence which we have presented to prove the determination on the part of the civil authorities of the State of Sucre acting, allegedly, in the name of and under instructions from the head of the nation, to deny justice to this company in the courts of that State.

The New York and Bermudez Company does not ask, nor does it expect, the Government of the United States to pass upon the merits of the controversy pending before the courts of this country, but while patiently engaged before the tribunals of this country in the defense of its rights—rights acquired in strict conformity to established laws—it is compelled to appeal to its Government for that protection which it believes it has the right to expect against the further outrageous denial of justice.

Yours, very respectfully,

J. L. RAKE, *Managing Director.*

[Inclosure No. 2.]

The Secretary of State to Minister Bowen.

[Telegram.]

Reported that Carupano court about to dispossess New York and Bermudez Company illegally and notwithstanding its appeal to the court of cassation. If necessary, take prompt and vigorous action to prevent such measures until you investigate and report for further instructions.

[Inclosure No. 3.]

Minister Bowen to the Minister for Foreign Affairs.

LEGATION OF THE UNITED STATES,
Caracas, April 1, 1902.

MR. MINISTER: A report has reached me that irregular proceedings have been instituted by a judge of the first instance at Carupano to give possession of the Felicidad asphalt mine to the Warner-Quinlan Company.

As I have been assured by trustworthy persons that the report is correct, and as I am most desirous of doing everything in my power to maintain the friendly relations that exist between the United States and Venezuela, I urge your excellency to have

your Government take such steps at once as are necessary to stay said irregular proceedings, and to prevent any change from taking place in regard to the possession of the said mine until the court of cassation at Caracas, before which the case now is, has rendered a final decision, or, at least, until I have reported your views to my Government and have received from it such instructions as I may require.

I would remind your excellency that this asphalt case was first tried before the said court of first instance at Carupano, and was from there carried on appeal to the superior court at Cumana, and then was brought on appeal to the court of cassation at Caracas. The question of the right of possession is the main point in the case, and it is now before the court of cassation, and will be decided in due course of time. The lower court at Carupano has no jurisdiction over the case whatsoever, and has had none since the case was taken away from it on appeal. The proceedings of the judge of that lower court were, therefore, not only irregular, but illegal, and it seems to me that in the opinion of both your Government and mine they should be regarded as intolerable.

I avail, etc., HERBERT W. BOWEN.

[Inclosure No. 4—Translation.]

The Minister for Foreign Affairs to Minister Bowen.

MINISTRY OF FOREIGN AFFAIRS
OF THE UNITED STATES OF VENEZUELA,
Caracas, April 3, 1902.

Mr. MINISTER: The courteous note of your excellency of the 1st instant, in regard to an affair of a judicial character concerning a certain asphalt mine situated in the State of Sucre, has been considered with that attention which the Government always gives to communications from your legation; but, as your excellency's note only mentions the existence of a litigation which is being carried on in the proper tribunals, the President of the Republic deems it impossible for the Executive power to take any measure that would seem to be an interference with the regular proceedings in the suit, as such action would be diametrically opposed to the provisions set forth in the constitution of the Republic, articles 116 and 117. Nor is it presumable that in an affair submitted to the decision of judges whose probity can not be doubted there would be any action taken against any one of the parties to the suit contrary to those principles which must regulate the proceedings. And even supposing such a case should arise, the same law gives to the respective attorneys in the case a remedy; so that the Executive can take no action in affairs of that nature.

The Government would be pleased always to be in accord with your legation as regards the manner of considering all questions which mutually relate to the interests of the citizens of one country established in the other; but, as the question under consideration is that of internal laws whose application can not be determined except by virtue of direct action emanating from those bodies which have legal or legitimate jurisdiction in the case, it is necessary perforce to respect this fact, otherwise there would be a contravention of those maxims and principles which the Government itself, as your excellency will understand, must always zealously respect.

In a note of the 22d of August, 1900, in reply to a request of a similar nature, this ministry explained to the United States legation the independence guaranteed to the judiciary by the constitution of Venezuela; and if, in spite of the fact that at that time there was a provisional government in the Republic, and nothing could be done contrary to that independence, which constitutes a guaranty for the investigation of all rights and is in itself invulnerable, much less now could a constitutional government take any action in contravention of said independence.

Will your excellency please accept the renewed assurance of my highest and most distinguished consideration?

J. R. PACHANO.

[Inclosure No. 5.]

Minister Bowen to the Secretary of State.

[Telegram.]

Confidential.]

APRIL 3, 1902.

Referring to your cable instructions, I addressed to Venezuelan Government vigorous letter objecting to proceedings court Carupano, giving order of possession of disputed asphalt mine to opponents New York and Bermudez Company. I charac-

terized proceedings as irregular, illegal, and intolerable, for the whole case was now on appeal from Carupano and Cumana to court cassation here. Court Carupano had no jurisdiction of the case after it was taken away on appeal. I had personal interview yesterday with minister for foreign affairs and handed to him my said letter, repeated its contents, and stated that if lower court of Venezuela usurps rights court of cassation the country is in a state of anarchy. Cabinet meeting was held and the President refused to interfere with the judiciary, claiming he had no power. I consider said proceedings outrageous, insulting, and defiant, and I advise, if possession is actually obtained under said illegal order by the opponents of Bermudez Company, that the United States proceed at once to blockade the ports of Venezuela and take such further action as may be necessary. Further discussion here useless.

BOWEN.

[Inclosure No. 6.]

The attorneys of Messrs. Warner and Quinlan to Minister Bowen.

CARACAS, *April 4, 1902.*

YOUR EXCELLENCY: The undersigned attorneys, representatives of Messrs. Charles M. Warner and Patrick R. Quinlan, North American citizens, in the suit which they have against the New York and Bermudez Company for the asphalt mine "Felicidad," have instituted two processes against said company, one before the federal court, asking it to declare the claim of the New York and Bermudez Company to the "Felicidad" mine to be without legal foundation, and the other, which is an injunction of dispossession instituted before the tribunals of the State of Sucre, to recover possession of the mine which was actually occupied by the Bermudez Company in January of last year.

In the process before the federal court is progressing slowly the process for possession, which from its nature is summary and rapid; we have obtained several verdicts by which possession of "Felicidad" is restored to Messrs. Warner and Quinlan.

Ever since the first of these verdicts, given in November of last year, our clients had a right to the mine, but for various reasons they postponed taking actual possession. The judge at Carupano, to whom was issued the order for the delivery of the mine to our clients, did not understand how to carry out the order that had been given to him for this purpose. The sickness and death of Mr. Patrick Sullivan, general agent of our clients, caused us to suspend all operations for obtaining possession of the mine until we received instructions from them. In this interval a new verdict from the court at Cumana confirmed the verdict of the judge at Carupano. The New York and Bermudez Company appealed from this latter sentence, but this does not suspend any rights of our clients to have the possession of the mine restored to them, as appeals in injunctions of dispossession and other processes are heard without prejudice to the execution of the verdict of the court. (Art. 572, Code of Civil Procedure.)

Sustained by the right given to him by the law, Mr. Quinlan decided to take actual possession of the mine, and applied to the judge of Carupano for an order for this purpose to the judge at Guarico, as the first order for possession had not been carried out. The judge at Carupano issued the order and Mr. Quinlan went from Trinidad to Guariquen to have the judge there carry out said order.

From rumors that are circulating and from some facts which make said rumors appear to be true, we know that the New York and Bermudez Company intends to oppose by force the execution of the order to the judge which is perfectly legal; we must, therefore, decline all responsibility for the consequences of such an act for those who thus oppose the law; and having been informed that your excellency has seen fit to apply to the national Executive for an annulment of the decree of the judge giving possession of the mine "Felicidad" to Messrs. Warner and Quinlan, we who represent and defend interests of North American citizens believe it our duty to represent to your excellency—since our clients can not do so themselves, as they are not in Caracas—that your action seriously impairs the defense of their rights, especially as such defense is in the hands of Venezuelan lawyers who can not look with indifference on a conflict between their country and the legation of the United States.

In addition to any further action our clients may take in this matter, since under the present conditions our defense of their rights is neither free nor efficacious, we ourselves, with the greatest respect, address this communication to your excellency in their names as American citizens.

We take this occasion to reiterate to your excellency the assurance of our distinguished consideration, and we subscribe ourselves,

Your obedient servants,

NICOMEDES ZULOAGA.
A. DE J. PAUL.

[Inclosure No. 7.]

Minister Bowen to the Secretary of State.

[Telegram.]

Confidential.] APRIL 5, 1902.

I have had two conferences with lawyers of Warner and Quinlan. They claim they are absolutely right in trying to obtain possession of asphalt mine under the Carupano order, but they have cabled their client not to try to take possession but to return here, owing to vigorous action of this legation and probably by advice of the Venezuelan Government.

BOWEN.

[Inclosure No. 8. Translation.]

Opinion of lawyers of Bermudez Company.

Article 572 of the code of civil procedure provides that an appeal should be made only to a devolutionary effect, that is to say, to only one effect.

Therefore it was within the power of the judge to order his decision to be executed within four days after such decision had been rendered, which is the delay fixed by article 436 of the same code, within which period the appeal could have been given course, sending the expediente to the Cumana court.

The judge failed to do this, the delay elapsed and can not be opened again (art. 164 of the same code) without having had his decision executed. He gave course to the appeal, and sent to the Cumana court the original expediente, and by so doing made manifest that his jurisdiction was at an end. (Art. 194 of the same code.)

The superior court in Cumana rendered its decision, but did not order it to be executed. It admitted the recourse to cassation under articles 409 and 410, and sent the expediente to the court of cassation in accordance with article 414, the courts of the State of Sucre thus freeing themselves from all jurisdiction in the matter until the court of cassation shall have decided on the recourse resorted to.

The jurisdiction which, as maintained at present, the judge at Carupano (based on art. 572) has assumed is absurd, since it is only in the case that he should have had his decision giving possession executed in due time that he would have had jurisdiction, and then only to maintain said possession; but, in the present state of things, he has no jurisdiction at all.

NOTE.—See article 12, covering fundamental principles of the Venezuelan code.

The Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 7, 1902.

Inquire into fact and circumstances of alleged firing upon New York and Bermudez Company's steamer in San Juan River.

HAY.

Minister Bowen to the Secretary of State.

No. 80.] LEGATION OF THE UNITED STATES,
Caracas, April 8, 1902.

SIR: I have the honor to report that on the receipt of your cablegram (a copy of which is herein inclosed), in regard to the alleged firing upon the steamer of the Bermudez Company in the San Juan River, I called upon the minister for foreign affairs and asked him for an explanation of the occurrence. He said that he had no knowledge of it, and that the act was probably committed by the revolu-

tionists, who have lately been occupying the San Juan River district. He promised to do his best to cause an investigation to be made, but he did not seem to think that it would be satisfactory. I told him that the name of the steamer in question is the *Viking*, and that the Venezuelan consul at Port of Spain, Trinidad, had refused to give her the usual clearance papers; and I asked him whether the consul had acted under orders issued by the Venezuelan Government. He replied, "No." I then asked what authority the consul had to refuse to issue said papers. He answered: "He probably thought the San Juan district was under the control of the revolutionists, and so exercised, quite rightfully, his discretion." I then said, "If the revolutionists control the said territory, and you are not able to recover it, and your officials refuse to authorize ships to clear for its ports, it would seem as if you acknowledge that a state of war exists, and as if you would have to take into consideration the advisability of conceding belligerent rights to the revolutionists, and, furthermore, as if we might have to come to an understanding with the revolutionary chief in regard to the rights which should be enjoyed by our citizens in the said territory and such of our ships as may be employed in carrying on trade therewith." He answered very promptly that his Government could control the said territory and that the consul would undoubtedly resume issuing clearance papers again very soon.

I did not, during my interview, call his attention to the coincidence that the *Viking* had been refused papers at the very time when it was planned to carry into effect the order of the Carupano court giving possession of the "Felicidad" mine to the opponents of the company owning the *Viking* for the coincidence might have been, of course, purely fortuitous. He might perhaps have replied that the Bermudez Company fearful of losing possession of its mine, had made the most of the incident on the San Juan River so as to secure the sympathy and support, at a critical moment, of the United States Government.

Whatever the facts in the case may be, I am of the opinion that they might better be investigated at Port of Spain, where the *Viking* now is, and consequently in the cablegram (copy of which is herein inclosed), which I have just sent to you, I have ventured to suggest that you send one of our warships there for that purpose.

I have, etc.,

HERBERT W. BOWEN.

The Secretary of State to Minister Bowen.

[Telegram.]

April 7, 1 p. m. Inquire into fact and circumstances of alleged firing upon New York and Bermudez Company steamer in San Juan River.

HAY.

Minister Bowen to the Secretary of State.

APRIL *8, 1902.*

Minister for foreign affairs states that his Government knows nothing about firing upon Bermudez steamer in San Juan River, and that the act was probably committed by revolutionists. The

steamer is at Trinidad, where it might be advisable to send warship so as to investigate. Impossible to investigate from here, as revolutionists seem to be controlling San Juan River region.

BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

[Confidential.] FROM CARACAS, *April 8, 1902.*

Minister for foreign affairs states that his Government knows nothing about firing upon Bermudez steamer in San Juan River, and that the act was probably committed by revolutionists. The steamer is at Trinidad, where it might be advisable to send warship so as to investigate. Impossible to investigate from here, as revolutionists seem to be controlling for the present San Juan River region.

BOWEN.

Minister Bowen to the Secretary of State.

No. 81.] LEGATION OF THE UNITED STATES,
Caracas, April 12, 1902.

SIR: I have the honor to inclose a copy of a protest filed at this legation by Mr. Rake, general agent of the New York and Bermudez Asphalt Company, in regard to the nondelivery of the company's telegrams.

I am, etc., HERBERT W. OWEN.

[Inclosure No. 1.—Translation.]

United States Consular Agency, Carupano, Venezuela.

Copy of declaration filed at United States consulate at Carupano, as requested by Mr. Geronimo Vincentelli, agent of the New York and Bermudez Company, re delivery of telegrams.

No. 1. Carupano, March 17, 1902. Mr. J. A. Orisini, consular agent of the United States of America. Dear Sir: In my capacity as agent, in the State of Sucre, for the New York and Bermudez Company, I have the honor to inclose my deposition relating to some telegraphic dispatches filed with the respective officers of the French Cable and National Telegraph of this city. I hope you will be kind enough to file the above-mentioned document in the archives of your office for future reference, and at the same time I wish a certified copy of said document to be handed to me. I am, sir, respectfully, yours. (Signed) Geronimo Vincentelli.

No. 2. I, Geronimo Vincentelli, certify that, acting in my capacity as agent for the State of Sucre for the New York and Bermudez Company, located at Carupano, I filed in the respective offices of the "National Telegraph" and the "Compagnie Francaise des Cables Telegraphiques," the following messages for transmission to the addresses and on the respective dates as here shown, and that the messages were regularly accepted for transmission by the agents in charge of the offices of said companies here.

National Telegraph: Carupano, February 20, 1902. J. L. Rake, Conde & Carmelitas, 8-3/4, Caracas. Judge Escobar by arbitrary decision declared well-founded recusation against Reyes. (Signed) Geronimo Vincentelli.

National Telegraph: Carupano, February 23, 1902. J. L. Rake, Conde & Carmelitas 8-3/4, Caracas. Doctor Farrera has just recused Judge Excobar, ostensibly partial. (Signed) Geronimo Vincentelli.

National Telegraph: Carupano, February 24, 1902. J. L. Rake, Conde & Carmelitas, 8-3/4, Caracas. Escobar the last suplente, in his decision of to-day on the recusa-

tion, orders that the president of the State should be informed that the panel has been exhausted in order that another should be appointed. I shall send by mail copies and informe. (Signed) Geronimo Vincentelli.

French Cable: Carupano, February 24, 1902. "Alpha-Caracas." Last suplente recused. Wait for president of the State to appoint a new panel. (Signed) Geronimo Vincentelli.

No. 3. United States consular agency: I, the undersigned, consular agent of the United States at Carupano, Venezuela, do hereby certify that the foregoing signature is the true and genuine signature of Mr. Geronimo Vincentelli, and that it was made and acknowledged in my presence, the said Geronimo Vincentelli being personally known to me. In witness whereof I have hereunto set my hand and affixed the seal of the consulate at Carupano, Venezuela, this 17th day of March, 1902 (L. S.). (Signed) J. A. Orisini, United States consular agent.

I, the undersigned, consular agent of the United States at Carupano, Venezuela, do hereby certify that the foregoing call and declaration signed "Geronimo Vincentelli," and the certificate thereto signed "J. A. Orisini, United States consular agent" numbered 1, 2, 3), are the true and faithful copies of the originals filed at this consulate, the same having been carefully examined by me and compared with the said originals and found to agree with them word by word and figure for figure.

Given under my hand and the seal of the consulate at Carupano this 18th dav of March, 1902.

(Signed) J. A. ORISINI,
United States Consular Agent.

[SEAL OF UNITED STATES CONSULAR AGENCY, CARUPANO.]

[Inclosure No. 2.]

NEW YORK AND BERMUDEZ COMPANY,
Caracas, March 5, 1902.

To the Director of National Telegraphs, Caracas.

MY DEAR SIR: On January 28 last one of our cablegrams having been detained by the censor at La Guaira, our Mr. Pastor y Nora called at your office and, with assurance to him that said cablegram would be forwarded to its destination, you requested of him our registered cable addresses. Complying with pleasure to your suggestion, I addressed to you a letter on the same date containing the above-mentioned addresses, and, though entirely superfluous, I went so far as to assure you that the company invariably confined its telegrams to its legitimate business. I requested, therefore, that our telegraphic messages should not be subjected to unnecessary delays which are, to say the least, inconvenient in the extreme.

That my request—a perfectly legitimate one—has not received favorable consideration is evidenced by the following fact: Three telegrams addressed to me, written in plain Spanish, the text of which after undoubted evidence as to their nature, sent by the agent of the company at Carupano on the 20th, 23d, and 24th of February last, and a cablegram sent by the same agent (Jeronimo Vincentelli) on February 24 to my cable address "Alpha Caracas," of all of which only one (the telegram of February 23) has reached me.

It is not possible that you should not appreciate the enormous damage that is caused to the company which I represent by such defects in a service which, putting aside considerations of great weight, makes perfectly useless all telegraphic communication.

In view of the foregoing facts, I have this day addressed a complaint to the minister of fomento with all the consideration and respect due to him.

Yours, very respectfully,

(Signed) J. L. RAKE,
Managing Director.

[Inclosure No. 3.]

TELEGRAPOS NATIONALES, DIRECTION GENERAL.
CARACAS, *March 7, 1902.*

Mr. J. L. RAKE, *Caracas.*

DEAR SIR: I beg to acknowledge receipt of your esteemed favor of the 5th instant. Although the minister of fomento (who has already been informed of your letter) will answer you directly, I beg to state that any telegrams addressed to you do not

suffer any delay in their transmission through the national lines, and if those of the 20th and 24th of last February, which you refer to, are missing, it must be due to the constant interruptions caused by the enemies of public order.

I have already ordered the repetition of the above-mentioned telegrams, and as soon as they come to my hands I shall have pleasure in forwarding them to you.

I am, etc.,

(Signed) E. VINCENTE VALARINO.

[Inclosure No. 4.]

NEW YORK AND BERMUDEZ COMPANY,
Caracas, March 4, 1902.

FRENCH CABLE COMPANY, *Caracas:*

On the 24th of February of the present year, our agent at Carupano, Señor Jerónimo Vincentelli, filed with your office at that place the following message, addressed to "Alpha-Caracas," which, up to this time, has not been delivered to the undersigned:

"Last suplente recused. Wait for president of state to appoint a new panel.

"JERÓNIMO VINCENTELLI."

We have frequently called your attention to the unusual delay in the delivery of messages to which this company has repeatedly been subjected, and we now formally serve notice upon you that we propose to hold your company liable for damages resulting from these causes.

Yours, etc., (Signed) J. L. RAKE, *Managing Director.*

[Inclosure No. 5.]

COMPAGNIE FRANCAISE DES CABLES TELEGRAPHIQUES,
Caracas, March 5, 1902.

To the Managing Director New York and Bermudez Company, Caracas.

MY DEAR SIR: Answering your esteemed favor of yesterday, I have the honor to inform you that the cablegram in question was duly received at our office in La Guaira, but was held there by the Government censor, who prohibited its transmission to Caracas.

Yours, very respectfully.

The CHIEF OF STATION.
(Signed) GUIATRAND.

[Inclosure No. 6.]

(50 centimo paper.)

CARACAS, *March 5, 1902.*

MINISTER OF FOMENTO, *Caracas:*

Attached hereto we submit copies of four messages filed by our agent at Carupano, three of them for transmission over national telegraph lines and the fourth with the French Cable Company. With the exception of the single message, dated at Carupano, February 23, none of these messages have been delivered to us. The messages in question are written in plain Spanish and themselves furnish positive evidence that they relate solely to the business of the company. Owing to the repeated inconvenience the company has suffered through delays in the transmission of messages, often amounting to so much as a fortnight, our agents in the east have been instructed to avoid the use of code or cipher words, and the director of telegraphs has been notified of our cable addresses in order that the legitimate business messages of the company might not suffer extraordinary delay through detention by the censor

The company has patiently endured these frequent annoyances without making complaint, and now regrets to be compelled to bring the matter to your attention in the hope that it may be afforded relief. It is scarcely necessary to point out to you the serious consequences that result to the company in the conduct of its business under conditions such as are referred to above.

Yours, etc., (Signed) J. L. RAKE,
Managing Director.

[Inclosure No. 7.]

Copy of official communication from minister of fomento.

J. L. RAKE,
Manager New York and Bermudez Company, Present:

This minister, having taken into consideration your petition, dated the 5th instant, referring to some telegrams addressed to you from Carupano and which have not been received by you, has ordered the director-general of national telegraphs to make immediate inquiry into the matter, and said official has informed me that it is possible the delays in the transmission of said telegrams may have occurred between the two points owing to the circumstance that during the last fortnight of last month some revolutionary guerrillas invaded certain localities through which the eastern lines pass. In view of the foregoing, the undersigned has ordered the repetition of the original telegrams addressed to your company that may have been deposited lately at Carupano, and has especially recommended to the director of national telegraphs to take all necessary measures in order that you may have no grounds for complaint, save in cases where the delays are beyond our control. God and Federation.

(Signed) FELIPE AROCHA G.

[Inclosure No. 8.]

Telegrafo national.

CARUPANO, *February 24, 1902.*

Drs. J. B. BANCE and M. A. PONCE:

Escobar has been recused for legitimate cause; they now propose to ask President of State for new suplentes. The *Viking* has not been here for some time and I am in need of funds.

(Signed) C. FARRERA.

The Secretary of State to Minister Bowen.

No. 55.] DEPARTMENT OF STATE,
Washington, April 17, 1902.

SIR: I quote for your information the following telegram, dated the 15th instant, from the honorable Frank Hiscock:

"We are cabled from Caracas that the American minister has interfered against Warner-Quinlan taking possession of their asphalt property under judgment of the Venezuelan courts.

"We had supposed our Government had left the contention to Venezuelan courts and are greatly surprised at action by our minister without giving Warner-Quinlan a hearing at least.

"Please advise me."

The Department will be pleased to have you report in regard to the charge made.

I am, etc., JOHN HAY.

Minister Bowen to the Secretary of State.

No. 85.] LEGATION OF THE UNITED STATES,
Caracas, April 20, 1902.

SIR: I have the honor to forward some memoranda in regard to the firing upon the steamer *Viking*. These documents were filed with me by the managing director of the New York and Bermudez Company, Mr. Rake.

I am, etc., HERBERT W. BOWEN.

[Inclosure.]

Memoranda in matter of refusal of Venezuelan consul at Port of Spain to issue clearance papers to the steamship Viking, of the New York and Bermudez Company.

April 3 (received 4.30 p. m.): Cable from Major Rafferty, advising that the Venezuelan consul had refused clearance papers to steamship *Viking*. After consulting American consul, Port of Spain, and the captain of the U. S. S. *Hartford*, the American consul signed papers. Requested us to notify the American minister at Caracas.

April 3 (p. m.): Cabled to Major Rafferty, advising him that his complaint would be brought to the immediate attention of the American minister.

April 5 (received 11 a. m.): Major Rafferty cabled, advising us that the steamship *Viking* had been fired upon by unknown parties in San Juan-Frances rivers at 2 o'clock in the morning; revolution increasing and in possession of Caño Colorado; property and lives Guanoco great danger; requesting us to apply for protection to the American minister at Caracas; reports U. S. S. *Hartford* at Port of Spain.

April 5 (sent 1.15 p. m.): Cabled to Major Rafferty that we had advised American minister of Guanoco situation; after consulting with captain of *Hartford* to let us know as soon as possible if another war ship was needed at Port of Spain.

April 5 (received letter of 2d from Port of Spain): Major Rafferty advises us that he is having difficulty with Venezuelan consul, who has refused to clear the steamship *Viking* for Caño Colorado on the ground that the latter place has been in the hands of the revolutionists. U. S. S. *Hartford* at Port of Spain, and as the *Viking* must go to Guanoco if necessary he will ask protection from the commander of the *Hartford*.

April 6 (letter to Major Rafferty, probably received by him on the morning of the 10th): Acknowledged his cable of 5th instant and advised him that translation of his message had been handed to the American minister. We were uncertain from his message whether the danger at Guanoco was due to revolutionary disturbances or not, although we assumed that to be the case; that the American minister dreaded to send the *Hartford* to Guanoco in view of the fact that she was a training ship and carried such a large proportion of young men and that a landing party might be compelled to remain there for a long time until the revolution had subsided; that it had finally been decided that he should consult the captain of the *Hartford* and advise whether another war ship was necessary at Port of Spain, and since he was in touch with the *Hartford* the captain of that vessel would doubtless not hesitate to act in any emergency that might arise. We suggested, further, in view of Mr. Bowen's advices to the State Department, assuming that the captain of the *Hartford* would report to his Department, together with our cable report to the New York office, his proper relief ought to be close at hand.

April 7 (10.40 a. m., received cablegram containing errors in transmission that obscured the sense and were not able to determine contents of message until repetitions were received 6.25 p. m.): Major Rafferty cabled acknowledging our cable of the 5th; informs us of his conference with the captain of the *Hartford* and that the *Hartford* will sail for St. Croix the following morning; will require small war ship; captain of *Hartford* has instructed American consul, who has notified Washington of *Viking* incident.

April 7 (letter to Major Rafferty, probably received by him on 12th): Acknowledging his cable of even date and advising him that prior to receipt of repetitions enabling us to decipher his message, the American minister had called and stated that he had received a communication from the State Department covering the *Viking* incident, and as soon as we translated his cable we had laid the contents before the American minister; that in view of the great difficulties surrounding cable communication between Port of Spain and Caracas and the infrequency of mails the American minister suggested that in such emergencies it would seem to be desirable that the American consul at Port of Spain should take the question up direct.

April 12 (received 8.50 a. m.): Major Rafferty cables acknowledging our letter of 6th and says we correctly understand Guanoco situation to be due to revolutionary disturbances; will leave to-day for Guanoco, protecting ourselves, and return April 14; was detained by Venezuelan consul, who threatens seizure of steamship *Viking;* American warships have left Port of Spain; American consul slow to act.

April 12 (sent 1.45 p. m.): Cable to Major Rafferty acknowledging his cablegram; have seen the American minister; advising him to make demand for all needful papers of the Venezuelan consul in the presence of his lawyer as witness, making statement of cause assigned if he refuses; in case the American consul refuses to act, to cable New York for warship.

April 12 (Major Rafferty's letter of 10th received): Major Rafferty says that he has discovered that the Venezuelan consul proposed to send a gunboat to seize the steamship *Viking* if he left for Guanoco that day; he points out the necessity of going to

Guanoco to provision our men there and to attend to important work under exploitation; he will consult the American consul and be guided by circumstances; calls attention to the gravity of the situation and points out that the State Department should come to our relief by affording necessary protection or permit us to properly arm ourselves to insure our own protection.

April 12 (6.25 p. m.): Cabled to Major Rafferty cautioning him to act within the law; advised him we were accomplishing everything possible in absence of his detailed report.

April 13 (received the following letter from Major Rafferty, dated April 7, from Port of Spain):

"J. L. RAKE, Esq.,

"*Private Bow W. 390, Caracas, Venezuela.*

"DEAR SIR: As reported in my letters by royal mail, Doctor Ponce and myself left here for Guanoco on the 2d of April.

"It was on the same day that the consul refused clearance papers on the ground that Caño Colorado was in possession of the revolutionists.

"He was particularly careful to spring this on us late in the day, after having kept us delayed on one pretext or another, and there is no doubt in my mind that the Warner and Quinlan people brought him his instructions and that he was trying to delay us all he could. As it was imperative that Doctor Ponce and I should go to Guanoco without delay, I appealed to the American consul at Port of Spain, who hesitated to act until convinced by the captain of the *Hartford;* American consul, Port of Spain, then signed the necessary papers. The Venezuelan consul is evidently of wrath at what he considers our lack of respect, and made a number of covert threats as to what would happen if his orders were disregarded; however, the captain of the *Hartford* told me to go ahead, and that he would take care of any side shows that might be tried on us.

"On reaching Caño Colorado, we found Gen. Horacio Ducharme in control of custom-house, and he entered and cleared us as chief of the revolution.

"Doctor Ponce and myself reached our destination on the evening of the 2d and made every possible arrangement to meet the Warner and Quinlan people if they came our way, and I left our place at 12 o'clock on the night of April 3d, well satisfied that our people could hold down the situation. Everything went well until we reached the junction of the San Juan-Frances rivers, when I was suddenly called by captain of *Viking*, who reported that we were being fired upon, and he at the same time promptly seized a barker and fired back. I do not know who the parties were, but there were three rowboats, with quite a number of men. We continued on our way, and on my return here I immediately reported to the American consul and the captain of the *Hartford;* the latter advised the American consul to notify the American minister at Caracas, which he did by cablegram in plain words, of which I inclose you a translation into code. I also inclose copies of cables sent and received between your office and this.

"In compliance with your last cablegram, I immediately consulted the captain of the *Hartford* and forwarded you a cablegram in accordance with his advice; he also instructed the American consul to notify Washington of the fact that the *Viking* was fired upon and that the manager of the company requested the *Hartford's* protection.

"Whether my action fits in with your views or not is difficult for me to know, but the fact remains that the country is in such a state that we need either direct protection from our Government or proper authority to defend ourselves, and such authority is not likely to be given from the only place where it could come, viz, Washington.

"Yours, truly,

"(Signed) MALCOM A. RAFFERTY, "*J. A. C.*"

April 14 (1.15 p. m.): Cabled Major Rafferty, in order to avoid giving pretence for seizure of steamship *Viking*, not to go to any Venezuelan ports until further advised.

[Translation of opinion of Dr. J. B. Bance in re *Viking* incident.]

Caracas, April 14, 1902.

Mr. J. L. RAKE,

Managing Director New York and Bermudez Company, Present.

DEAR SIR: Complying with your wishes, I have given my most special attention to the incident of the *Viking*, although we have not yet the necessary information as to exactly what has happened which would serve as a sure guide for us to give an opinion in the matter.

The facts such as have been stated and on which I base my conclusions are as follows:

The steamship *Viking* was in absolute necessity of going from Port of Spain to Caño Colorado without any loss of time, to carry one of our attorneys, whose presence was indispensable there, as well as to carry provisions, as it always does, for the work-

men and employees of the company at Guanoco. The Venezuelan consul at Port of Spain refused to give the vessel papers without stating his reasons for his action, and the vessel, compelled as it was for the urgent necessity of accomplishing its duty, and besides, being under the American flag, received its papers from the American consul at that place, and left Port of Spain. We do not yet know whether the steamer touched at Caño Colorado or at some other port, nor if the provisions it carried were unloaded, but according to the information given to me, it touched on the Venezuelan coast, and that on returning to Port of Spain was fired at in the "Caño Frances," receiving some gunshots from land, from whom as yet unknown.

These are the facts which I take as certain, save such change as further information may make.

It is a principle of universal legislation, also adopted by Venezuela, that ignorance of the established laws does not excuse its nonfulfillment, and, in what relates to revenue matters, Law XVI, chapter 13, article 226, of the code of hacienda, offers a weak attenuation to that principle; moreover, article 24, chapter 1, of the same law, imposes on the Venezuelan consuls in foreign countries the duty of informing whoever desires information on this point of the contents of revenue regulations and give any explanations he may be asked for on the subject, with the view of saving the interested parties from any damages that might be derived from its nonfulfillment.

The vessel could not have left legally from Port of Spain for Caño Colorado without papers having been given to it by the consular agent of Venezuela, and its having left without such papers can not be excused by the absolute necessity that was alleged, nor is it covered by papers given to it by the American consul, which would only serve to prove that the steamer was not on a smuggling expedition, which is a most important fact; but the fact always remains that Law XVI, article 2, was not complied with, and, besides, articles 24, 36, 38, 47, 187, 190, 194, 195, and 223 of the same law are against us; also Law XXI of the above-mentioned code, article 1 (cases 4, 5, 6, 9, and 10).

The consul having refused to give the vessel any papers, he would have been liable to responsibility for any damages (art. 39, Law XVI) if the captain of the steamer had confined himself to obtaining some proof of such refusal as well as of the imperative necessity for his sailing. The responsibility of the consular agent might have been used against the Venezuelan Government. However, the fact of the steamer having left and returned in spite of such a refusal constitutes a violence that places us in a disadvantageous position.

It is obvious, on the other side, that the steamer, by leaving port without papers by the Venezuelan consular agent, did not in any way facilitate its trip nor cover the possibility of accomplishing the mission, which was alleged to be indispensable, since on its arrival it would legally be liable to be stopped and seized, not only the steamer itself, but its cargo also, and in the case it had touched at some unopened port, or a deserted island, in which cases the responsibility incurred would be still more serious. The alleged imperative necessity is entirely destroyed by these arguments.

It is a fact that the steamer touched the Venezuelan coast for the purpose of landing men and provisions (I do not know whether it succeeded), since on its return it was fired at in the "Caño Frances." It is therefore unquestionable that, besides the steamer having left without the necessary papers, it illegally landed and returned.

Any damages that either the steamer or the company may have suffered, on the former being fired at in the Caño Frances, can not be claimed on solid grounds—firstly, because it was illegally navigating Venezuelan waters; secondly, because it is not known whether the attack came from public forces or revolutionary forces, and thirdly, because if it came from revolutionary forces—this is a point that has been discussed and maintained on good grounds by the Department of State of the United States, that a government can not be held responsible for damages caused within its territory to foreigners by a revolutionary party, and this theory would surely be invoked against the company.

The Venezuelan consul at Port of Spain was not in the right in refusing papers to the steamer without expressing the reasons he had for so doing, but unfortunately the company did not avail itself of this circumstance, which might have placed it in a good position to claim damages.

These considerations, founded on the lack of information that I have, may be changed by further and more accurate facts.

My impression (or opinion), as one of the company's attorneys, is that the *Viking* should not return to Venezuela; if it did, it would be seized under the revenue regulations or laws.

Looking forth to new developments in this case, and awaiting your orders, I remain,

Yours, very truly,

J. B. BANCE.

[Translation of modified opinion Dr. J. B. Bance in re *Viking* incident.]

CARACAS, *April 18, 1902.*

Mr. J. L. RAKE,
Managing Director of the New York and Bermudez Company,
Caracas, Venezuela.

DEAR SIR: I beg to confirm in all its parts my letter of the 14th instant, since it is still my belief that if the steamship *Viking* touches again the Venezuelan coast it will be seized under the revenue laws. But the further information that I now possess places me in a position to add to, and to a certain extent to modify, my previous impressions in a manner favorable to our position.

The new facts given to me are as follows: First, that the Venezuelan consul, on refusing to give the steamship *Viking* papers for Caño Colorado (Venezuela) gave as a motive for his refusal the fact that the region in which Caño Colorado and the custom-house are situated was in the hands of the revolutionists, and second, that the *Viking* arrived at the custom-house and landed there one of the company's attorneys and some provisions for the employees of the company and that, on its return, it was cleared by the custom-house, which actually was in the hands of the revolutionists.

In my opinion the grounds on which the consul based his refusal is not a legitimate one, Caño Colorado being, as it is, an open port to foreign commerce. The port had neither been closed nor blockaded, and foreign vessels are perfectly strange to the political convulsions the country is going through.

These facts once established, and taking into account that the *Viking* might be seized, the company would have a right to claim damages through diplomatic channels, basing its claim on international rules. There are several very important precedents in our favor in the diplomatic records, not only of the United States, but also in those of Venezuela.

It is very important to obtain and keep at hand some evidence proving the grounds on which the Venezuelan consul based his refusal to let the *Viking*, on its trip or trips, sail aswell as carry its cargo. It is important to prove the fact that it was given papers by the American consul, as well as its having been entered and cleared by the insurgents that were in possession of the custom-house at Caño Colorado.

I shall have the pleasure in due time to hand you a full report, containing precedents of an international order, on which my opinion is based.

Yours, truly, J. B. BANCE.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 21, 1902.

The Department's instruction to you to object to illegal dispossession of Bermudez Company was not intended to imply any interference with the regular administration of justice, but only that you should object if, upon your knowledge of the facts, illegal dispossession should be attempted. If there appears to be any abuse in the administration of justice, including enforcement of judgments, requiring or seeming to require action of this Government, you will report the facts to the Department and await instructions.

HILL, *Acting.*

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 22, 1902.

Represented Venezuelan consul Port of Spain, who refuses clear Bermudez Company's vessel *Viking* for Caño Colorado with food supplies for employees, declares if vessel proceeds with papers signed by

the United States consul he will send gunboat to seize her as pirate. Ascertain and report whether declaration of Venezuelan consul was authorized by Venezuelan Government.

HILL, *Acting.*

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *April 22, 1902.*

Last eighteen words of your cable unintelligible. Attempted dispossession Bermudez Company abandoned for the present, as adversary of Bermudez Company left here for New York yesterday, after interview with me.

BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *April 23, 1902.*

In answer to your corrected cable, I believe order of dispossession was illegal, and I objected so vigorously that dispossession was not attempted. I think status should be maintained until final judgment is rendered. Lawyer of adversary of Bermudez Company showed me to-day cable from Washington stating that you had instructed me not to interfere with judgment. He claimed order of dispossession might now be enforced. I told him I should not take back one word I have said to the Venezuelan Government, nor cease to object to enforcement of illegal order of dispossession until I am peremptorily instructed so to do by you.

BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *April 23, 1902.*

Minister for foreign affairs says Venezuelan code compels war ships to capture as contraband any ships not duly cleared by Venezuelan consuls.

BOWEN.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 25, 1902.

This Government regards the course of the Government of Venezuela respecting the *Viking* as contrary to international law and requests that the Venezuelan consul be directed to issue clearance papers or that those of the American consul be respected. The circumstances require prompt action.

HILL, *Acting.*

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *April 30, 1902.*

Minister for foreign affairs, by order of the President, has filed with me a strong protest against act of our consul at Port of Spain in clearing *Viking* for Caño Colorado, and characterizing it as an interference with Venezuelan commerce and an infringement on the Venezuelan sovereignty. The minister states that this incident is serious, and requests protest be forwarded to you.

BOWEN.

The Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, May 1, 1902.

Without waiving rights already claimed, say to Venezuelan Government that upon representations made to this Department the men of the New York and Bermudez Company are without food and dependent upon the provisions on board the *Viking*, it is urged that after search for arms and ammunition, the *Viking* be cleared with an innocent cargo for Caño Colorado either by the Venezuelan or the American consul. Answer urgent.

HAY.

Minister Bowen to the Secretary of State.

No. 90.] LEGATION OF THE UNITED STATES,
Caracas, May 2, 1902.

SIR: I have the honor to confirm and acknowledge cables in regard to the *Viking* incident, copies of all of which will be found on the annexed sheets. I also inclose translations of the foreign office correspondence on the subject and some documents furnished by Mr. Rake, general manager of the New York and Bermudez Company.

I am, etc.,

HERBERT W. BOWEN.

[Inclosure No. 1—Telegram.]

The Acting Secretary of State to Minister Bowen.

APRIL 22, 1902.

Represented Venezuelan consul, Port of Spain, who refuses clear Bermudez Company vessel *Viking* for Caño Colorado, with food supplies for employees; declares if vessel proceeds with papers signed by United States consul he will send gunboat to seize her as pirate. Ascertain and report whether declaration of Venezuelan consul was authorized by Venezuelan Government.

HILL, *Acting.*

[Inclosure No. 2—Telegram.]

Minister Bowen to the Secretary of State.

APRIL 23, 1902.

Minister for foreign affairs says Venezuelan code compels warships to capture as contraband any ships not duly cleared by Venezuelan consuls.

BOWEN.

[Inclosure No. 3—Translation.]

The Minister for Foreign Affairs to Minister Bowen.

APRIL 26, 1902.

MR. MINISTER: In accordance with instructions from the President of the Republic, I have to inform you of and protest against an act committed by the United States consul at Port of Spain as an interference with Venezuelan commerce and an infringement on the internal jurisdiction of this Republic. I refer to the clearance of the *Viking* for Caño Colorado, and which was mentioned in a note to your excellency from my predecessor on the 8th of this month.

The Venezuelan consul in Trinidad having been obliged to suspend temporarily the clearance of ships for certain ports on the coast where there are at present no fiscal authorities, the United States consul took it upon himself to clear the ship in spite of the protests of the Venezuelan consul and of the exceptional circumstances that had caused clearance to be temporarily suspended.

Law XVI of the Hacienda Code prescribes certain duties to consuls which can not be fulfilled without the concurrent action of the fiscal agents in the Venezuelan ports. So that the temporary suspension of consular clearance, made necessary on account of certain internal conditions, and for certain places like Caño Colorado, which is only open for the importation of its own consumption, did not, on account of the interference of a foreign consul, produce, as it naturally would, a state of affairs favorable for peace, but an exactly opposite effect to that which was sought for in the law for the safeguard of general interests.

In informing your excellency of this grave incident I beg that you will notify your Government of this protest against the action of the United States consul at Port of Spain.

Accept, etc., MANUEL FORMBONA PALACIO.

[Inclosure No. 4—Translation.]

The Minister for Foreign Affairs to Minister Bowen.

CARACAS, *April 8, 1902.*

MR. MINISTER: A little while before the interview I had the honor of having with your excellency yesterday afternoon, I had received orders from the President to inform your legation that on the 4th of the present month the steamer *Viking* had left Port of Spain for Guanoco without clearance papers from the Venezuelan consul. It is to be supposed that the agent of this Republic called the attention of the ship to the fact that there were no fiscal agents in Guanoco.

In informing your excellency of this fact I must say to you that the Government reserves to itself in this matter any action provided by the fiscal laws.

I renew etc., J. R. PACHANO.

[Inclosure No. 5—Telegram.]

Minister Bowen to the Secretary of State.

APRIL 26, 1902,

Minister for foreign affairs has filed with me strong protest against act of our consul at Port of Spain in clearing *Viking* for Caño Colorado, and characterizes it as an interference with Venezuelan commerce and an infringement on the Venezuelan sovereignty. The minister states that this incident is serious and requests protest be forwarded you.

BOWEN.

[Inclosure No. 5.]

M. A. Rafferty to J. L. Rake.

PORT OF SPAIN, TRINIDAD, *April 16, 1902.*

DEAR SIR: Inclosed please find copies of the correspondence on the clearance of the steamship *Viking*, etc.

The facts are as follows:

On April 2 we applied for Venezuelan consular clearance for the *Viking* to proceed to Caño Colorado.

The Venezuelan consul kept us waiting on various pretexts until late in the afternoon (he was closeted most of the day with P. R. Quinlan and his agents). On the afternoon of the 2d of April I received the attached, marked "1," and immediately handed it to the United States consul, at the same time requesting an American consular clearance.

The American consul hesitated, and in fact endeavored to find excuses to avoid giving us a clearance; but finally finding we intended calling for the *Hartford's* protection, was induced to act, which he did by forwarding No. "2," and after receipt of No. "3," giving us clearance.

In No. 3 you will have the reply of the Venezuelan consul; in his clause No. 1 he lies, and you will also note his concluding paragraph. The Michelena referred to has been a customs officer at the Caño Colorado for a long time, and is not our agent, unless the fact that he usually received a fee from us to induce him to hurry with our papers could make him so.

Nos. 4 and 5 are my own and Captain Dalton's reports to the United States consul that the *Viking* was fired at, and demanding protection.

Nos. 6 and 7 speak for themselves.

On April 10 we again applied for a Venezuelan clearance, and were not only refused, but threatened by the Venezuelan consul that if we took the *Viking* into Venezuelan waters without his permission he would have the boat seized as a pirate. Nos. 8 and 9 refer to this.

The United States consul again cleared us, and on the same day I received No. 10 from the Venezuelan consul. We left here on the night of the 10th fully prepared to protect ourselves, and returned to Port of Spain on the 14th without being interfered with.

Yours, truly, MALCOLM A. RAFFERTY.

[Inclosure No. 7.]

Mr. Figueredo to Mr. Rafferty.

[Translation.]

TRINIDAD, *April 2, 1902.*

Taking in consideration that the port of Caño Colorado has been occupied by the revolutionists, the traffic between this island and the said port must be stopped until a new order from the National Government.

Please advise receipt of this letter.

Yours, truly, CARLOS B. FIGUEREDO.

[Inclosure No. 8.]

Consul Smith to Mr. Figueredo.

PORT OF SPAIN, TRINIDAD, *April 2, 1902.*

SIR: I have the honor to inform you:

I am advised by Maj. Malcom A. Rafferty, manager for the New York and Bermudez Company, that he made application for clearance papers for the American vessel *Viking*, of New York, belonging to the said New York and Bermudez Company. The said papers applied for were for the purpose of entering the steamship *Viking* at Caño Colorado, Venezuela, from where the steamship *Viking* was to proceed to Guanoco, her destination.

I am further advised by Major Rafferty that the papers applied for have been refused.

I have the further honor to advise you that it is imperative, in the interests of the New York and Bermudez Company, that the steamship *Viking* should proceed to

Caño Colorado and Guanoco, as, in view of these conditions, I respectfully request that you favor the New York and Bermudez Company with the papers requested, and in the event of your not issuing same, that you advise me in writing your reasons for such refusal to issue said papers.

I have, etc., ALVIN SMITH, *United States Consul.*

[Inclosure No. 9.]

Mr. Figueredo to Consul Smith.

[Translation.]

PORT OF SPAIN, *April 2, 1902.*

SIR: I have the honor to acknowledge receipt of your letter of this date. In answer to it I must tell you:

I. It is not true that in this consulate has been refused the papers for dispatching the *Viking*, as they not even were brought to the secretary. When Major Rafferty asked at what time he could get the papers which he intended to send, I answered by word and soon after by an official letter, which he had not the kindness to acknowledge receipt, that taking in consideration that the revolutionists were in possession of Caño Colorado, the said port closed to traffic until new order from the Venezuelan Government, the closing of the said port being for all national and foreign vessels, without any exception.

II. My honorable colleagues must understand, whose intervention in this affair I consider particular and officiously, it is not possible that, signed by a Venezuelan authority, as I am, those papers serve to give life and movement, in any form, to places commanded by revolutionary chiefs, even if it is temporarily.

III. The dispatch of vessels made by this consulate to a port occupied by the revolution would be an act of immorality, a treason to the constitutional Government of Venezuela, as it would be a sanction of the revolt, and I, neither as consul for Venezuela nor in any form, commit disloyal or immoral acts.

I think wise to tell you that the collector of Caño Colorado, appointed by Gen. Horacio Ducharne, is Mr. Michelena, the agent for the New York and Bermudez Company.

I have, etc., C. B. FIGUEREDO.

[Inclosure No. 10.]

Mr. Rafferty to Consul Smith.

APRIL 4, 1902.

SIR: I beg to submit the following statement to you, which connects with the information you already have concerning the movements of the New York and Bermudez Company's steamship *Viking:*

The Venezuelan consul, Mr. Carlos B. Figueredo, having refused to give the company's vessel clearance for the Caño Colorado, in Venezuela, the matter was brought to your attention and you cleared the vessel as United States consul. The *Viking* proceeded to the vicinity of the custom-house at Caño Colorado, stopping at her customary anchorage, and from there I proceeded up the river to the custom-house.

I found the custom-house at Caño Colorado in possession of one Horacio Ducharne, whom I ascertained to be a revolutionary leader, and he informed me that he was general in control of the whole district for the revolutionary party in Venezuela.

General Ducharne accepted the papers provided by you as United States consul, and at the same time gave me clearance papers for my return trip to Trinidad.

After leaving the Venezuelan custom-house I proceeded on board the steamship *Viking* to the New York and Bermudez Company's dock at Guanoco.

I left Guanoco on board the steamship *Viking* at 11.45 p. m., April 3, the vessel proceeding down the Guanoco and San Juan rivers on her way to Trinidad.

On nearing the junction of the Frances and San Juan rivers I was suddenly called from my berth by Captain Dalton, master of the *Viking*, who informed me that we were being fired upon. I reached the deck in time to hear two shots from some boats that were near us, and prepared myself to repel any further attack.

Attached I beg to hand you a report to me from the captain of the *Viking*, which I have carefully inquired into and find to be correct in every feature.

In conclusion I beg to state that the New York and Bermudez Company has on its *property at* Guanoco, Venezuela, at the present moment 6 citizens of the United

States and over 100 British subjects. I beg further to state that, from my own observation, that portion of the country embraced by the eastern portion of the State of Sucre and part of the State of Maturin is entirely without law or order, as is shown by the fact of the New York and Bermudez Company's vessel (employed only in the legitimate business of the company) being fired upon, and, still further, that I consider the employees of the company at the company's works at Guanoco are in danger of similar attacks at any moment.

I would respectfully ask that you draw the attention of the proper authorities of the United States Government to this matter, looking toward proper and adequate protection of its citizens employed by the New York and Bermudez Company.

Respectfully,

M. A. RAFFERTY,
Manager New York and Bermudez Company, British West Indies.

[Inclosure No. 11.]

Captain Dalton to Mr. Rafferty.

PORT OF SPAIN, TRINIDAD, *April 4, 1902.*

SIR: I beg to submit the following report in connection with the movements of the company's steamship *Viking* for your attention:

In accordance with your instructions the steamship *Viking* left the company's dock at Guanoco at 11.45 p. m., April 3. We proceeded down the San Juan River without any unusual incidents until on nearing the junction of the Frances and San Juan rivers the ship was suddenly fired upon from three boats which were lying in the shadow of the mangrove trees on the bank nearest us.

We were not hailed or signaled in any way; the boats had no lights and gave no intimation of their location until they opened fire on us.

At the first shot I called you from your stateroom, at the same time picking up a rifle that was in your room, and reached the forward part of the deck in time to hear the bullet from the second shot. I then returned the fire with one shot, when the party attacking us fired their third and final shot, I firing my second shot almost simultaneously. In accordance with your instructions I proceeded on my way down the San Juan River to the Gulf of Paria and on to Port of Spain.

I have no knowledge as to whom the boats attacking us belong to or of whom their crews consist, but I am perfectly satisfied that these boats were lying in ambush to attack the *Viking*.

I beg to request that the company will afford myself and the vessel proper protection, as under the conditions existing at the present time in that part of Venezuela in which I have to handle the *Viking* is apparently without law or order, and I consider that the company's steamer and my own life and that of the crew to be in danger at any moment while traveling in Venezuelan waters.

I beg to state that the foregoing statement, as far as the attack on the steamer is concerned, can be confirmed by the steersman of the vessel.

Respectfully,

JAMES DALTON,
Captain of the New York and Bermudez Company's Steamer Viking.

[Inclosure No. 12.]

Mr. Figueredo to the Manager of the New York and Bermudez Company.

[Translation.]

PORT OF SPAIN, TRINIDAD, *April 5, 1902.*

SIR: It is very strange that up to the present moment you have not deigned to answer my letter of the 2d instant, in which I advised you that the revolutionists being in possession of the port of Caño Colorado, this consulate had suspended the dispatching of vessels to said port until the Venezuelan Government instructs the contrary.

By this letter I come now to give the same advice, and I wish to have an answer in due form and which in every case will save the responsibility of my Government, of the Venezuelan Republic, and even mine, if on account of the trips of vessels belong-

ing to that company or of vessels dispatched by said company, without an order from this consulate, the said vessels or the interests of the company in Guanoco suffer any injury or damage made by the revolutionists.

The manager of the company must know that of all that has happened and also of the last trip of the steamer *Viking* I have informed my Government, the "sole" authority I acknowledge and before which I must render an account of my actions.

You have the right of complaint and protest before my Government, which you can make whenever you think convenient.

Your servant,

CARLOS B. FIGUEREDO,
Consul for Venezuela.

[Inclosure No. 13.]

Mr. Rafferty to Mr. Figueredo.

PORT OF SPAIN, TRINIDAD, *April 7, 1902.*

SIR: I beg to acknowledge the receipt of your favor of the 5th of April, for which please accept my thanks.

MALCOM A. RAFFERTY,
For New York and Bermudez Company.

[Inclosure No. 14.]

Mr. Rafferty to Consul Smith.

APRIL 10, 1902.

SIR: I beg to hand you attached a report from the captain of the New York and Bermudez Company's steamer *Viking*, Capt. James Dalton, with regard to the action of the consul for the United States of Venezuela on our application for a clearance for the *Viking*, from Port of Spain to Caño Colorado, Venezuela.

I beg to state that it is of the utmost importance to the business of the New York and Bermudez Company that the *Viking* should proceed to Guanoco, Venezuela (port of entry, Caño Colorado), not only with regard to the regular business of the company, but in order to supply provisions to 7 citizens of the United States of America and over 100 British subjects who are located at Guanoco. I beg further to state that the above-mentioned employees of the company are at the present time in want of provisions.

I especially draw your attention to Captain Dalton's statement of the threat of the Venezuelan consul to treat the *Viking* as a pirate if she goes to Venezuelan waters, and hereby demand the protection of the Government of the United States of America.

Respectfully,

MALCOLM A. RAFFERTY, *Manager.*

[Inclosure No. 15.]

Captain Dalton to Mr. Rafferty.

APRIL 10, 1902.

DEAR SIR: In accordance with your instructions to clear the *Viking* for Caño Colorado, I presented myself at the office of the consul for the United States of Venezuela at 2 o'clock to-day, having the usual papers, viz, manifest, crew list, baggage list, list of passengers, etc., with me.

I saw the consul for the United States of Venezuela in person, and he conversed with me in English, which language he speaks fluently. The Venezuelan consul refused to clear the *Viking* for Caño Colorado on the ground that the port of Caño Colorado is in the hands of Venezuelan revolutionists, but offered to clear the vessel for Pedernales.

It will be of no use to enter the *Viking* at Pedernales, that being a port far distant from the San Juan River, through which we have to travel to the New York and Bermudez Company's headquarters at Guanoco, and for which Caño Colorado is the port of entry.

Furthermore, there is no port of entry at Pedernales, the customs port for that place being Gairia.

The consul for the United States of Venezuela further stated that if the *Viking* proceeded to Venezuelan waters without clearance papers from the Venezuelan consul she would be treated as a pirate, and that it would be necessary for him to send the Venezuelan gunboat *Miranda* after the *Viking* and treat her as a pirate according to Venezuelan laws.

I immediately reported to the office of the company and was instructed to report the matter to the consul for the United States of America.

Following out these instructions, I reported to the consul for the United States of America all the foregoing facts.

Yours, truly,

JAS. DALTON,
Captain of the Steamship Viking.

[Inclosure No. 16.]

Mr. Figueredo to Captain Dalton.

[Translation.]

CONSULATE OF THE UNITED STATES OF VENEZUELA,
Trinidad, April 10, 1902.

SIR: I am very sorry not to be able to dispatch you for Caño Colorado by the same motive which prevented me from signing your papers the last time.

I am, etc.,

CARLOS B. FIGUEREDO.

Minister Bowen to the Secretary of State.

No. 91.] LEGATION OF THE UNITED STATES,
Caracas, May 2, 1902.

SIR: I have the honor to acknowledge and confirm cables from and to the Department in regard to the order of the court of Carupano dispossessing the New York and Bermudez Company of the mine "Felicidad," copies of which will be found on the annexed sheets. I also inclose the affidavits of Major Rafferty and Mr. Ganteaume in regard to the assertions of the judge who issued said order.

I am, etc., HERBERT W. BOWEN.

[Inclosure No. 1—Telegram.]

The Acting Secretary of State to Minister Bowen.

APRIL 21, 1902.

The Department's instructions to you to object to illegal dispossession of Bermudez Company was not intended to imply any interference with the regular administration of justice, but only that you should object if, upon your knowledge of the facts, illegal dispossession should be attempted. If there appears to be any abuse in the administration of justice, including enforcement of judgments, requiring or seeming to require action of this Government, you will report the facts to the Department and await instructions.

HILL, *Acting.*

[Inclosure No. 2—Telegram.]

Minister Bowen to the Secretary of State.

APRIL 22, 1902.

Last 18 words of your cablegram unintelligible. Attempt to dispossess Bermudez Company abandoned for the present, as adversary of Bermudez Company left here for New York yesterday after interview with me.

BOWEN.

[Inclosure No. 3—Telegram.]

Minister Bowen to the Secretary of State

APRIL 22, 1902.

In answer to your corrected cable, I believe order of dispossession was illegal, and I objected so vigorously that dispossession was not attempted. I think status quo should be maintained until final judgment is rendered. Lawyer of adversary of Bermudez Company showed me to-day cable from Washington stating that you had instructed me not to interfere with judgment. He claimed order of dispossession might now be enforced. I told him I should not take back one word I have said to the Venezuelan Government nor cease to object to enforcement of illegal order of dispossession until I am peremptorily instructed so to do by you.

BOWEN.

[Inclosure No. 4.]

Affidavit of Malcolm A. Rafferty.

TRINIDAD, BRITISH WEST INDIES.

I, Malcolm Anstice Rafferty, of Port of Spain, in the island of Trinidad, manager of the New York and Bermudez Company, make oath and say as follows:

I. On the 1st of April, 1902, having been informed by the counsel of the said company, Dr. Celestino Ferrara, that an order of possession had been granted to Messrs. Warner & Quinlan in respect of the Felicidad mine claimed by them, and that the said order was irregular and "ultra vires," I requested an interview with Señor Ramon Figueroa, the judge of the court of first instance in Carupano.

II. At the said interview the said judge admitted in my hearing and in my presence that the order was irregular and stated that he had been compelled to make the said order under instructions from his superiors in office.

MALCOLM A. RAFFERTY.

Sworn at the court-house in the town of Port of Spain, in the island of Trinidad, this 16th day of April, 1902, before me.

[Notary's signature.]

[Inclosure No. 5.]

Affidavit of Henry Peter Ganteaume.

TRINIDAD, BRITISH WEST INDIES.

I, Henry Peter Ganteaume, of Port of Spain, in the island of Trinidad, barrister at law, make oath and say as follows:

I. I am thoroughly acquainted with the Spanish language.

II. On the 31st day of March, 1902, I accompanied Malcolm Anstice Rafferty, the manager of the New York and Bermudez Company, to Carupano as his legal advisor.

III. On the 1st day of April, 1902, I had a conference with Dr. Celestino Ferrara, counsel for the said company in Carupano, and was informed by him that the judge of first instance there, Señor Ramon Figueroa, had granted an order for possession to Messrs. Warner & Quinlan of the Felicidad mine claimed by them, and that the said order contained a direction for the use of the Government forces, if necessary, to carry out the said order.

IV. I was then shown a certified copy of the said order which the said Dr. Celestino Ferrara informed me was irregular and "ultra vires."

V. On the same day Malcolm Anstice Rafferty, Dr. Celestino Ferrara, and I, this deponent, had an interview with the said judge at the house of the latter.

VI. At that interview the said judge admitted the irregularity of the said order and stated that he had been compelled to make the said order under instructions from his superiors.

HENRY P. GANTEAUME.

Sworn at the court-house in the town of Spain, in the island of Trinidad, this 16th day of April, 1902, before me.

[Notary's signature.]

Minister Bowen to the Secretary of State.

No. 93.] LEGATION OF THE UNITED STATES,
Caracas, Venezuela, May 4, 1902.

SIR: I have the honor to report that on the receipt, day before yesterday, of your delayed cablegram of the 25th of April (a copy of which is inclosed herein), I called on the minister for foreign affairs and told him that my Government protests against the views of the Venezuelan Government in regard to the *Viking* matter, on the ground that they are contrary to international law, and requests that the Venezuelan consul be directed to give clearance papers to the ship or that those of the American consul be respected.

The minister replied that his Government had protested against the act of the American consul in giving papers to the *Viking*, and that he is awaiting your answer. He seemed to think our consul had acted not only irregularly, but illegally. I did not discuss the question with him, as our consul in Trinidad is not under my jurisdiction or supervision, but I expressed the hope and belief that you would give the protest your careful consideration and would answer it promptly.

I then asked him what objection he had to ordering the Venezuelan consul to furnish the *Viking* with clearance papers. He answered that his Government has no custom officers at present at Caño Colorado, and that President Castro fears that if papers are given to the *Viking* the supplies she carries will be seized by the revolutionists, and that the *Viking* will thus serve as an agent of the revolution. I replied: "That view is erroneous. If the revolutionists seize the provisions on the *Viking*, they will be committing a hostile and depredatory act that will serve to induce my Government to take into consideration the advisability of using force to compel the revolutionists to respect our flag, and, consequently, your Government, instead of losing anything, would derive a very considerable benefit by complying with our request." I then suggested that the Venezuelan consul be directed to issue clearance papers to the *Viking*, with the understanding that only provisions be carried on her to the asphalt mines, and that the said consul be instructed to visit the *Viking* at both the beginning and the end of her round trip in order that he might satisfy himself that the said understanding was being carried out in good faith. I then hinted that if the Venezuelan Government does not comply with our request I could not be expected to try to induce my Government not to take such steps as it may deem necessary to see that the men at the asphalt mine are properly supplied with provisions. The minister said that he would confer with President Castro and let me know his decision early in the morning. Faithful to his promise, he called on me yesterday morning before breakfast and said: "President Castro is willing, out of respect to you and your Government, to accede to your request, and I will send to you to-day a letter (a translation of which is herein inclosed) which you may yourself forward to the Venezuelan consul."

I thanked the minister and told him that I hoped the arrangement would prove entirely satisfactory to my Government.

This morning I received yaur two delayed cablegrams (copies of which are herein inclosed) suggesting substantially the same plan as

the one I had proposed as above indicated, and in answer to them I have just sent to you a cablegram (copy of which is herein inclosed) stating that the matter has been arranged.

I am, etc., HERBERT W. BOWEN.

[Inclosure No. 1—Telegram.]

The Secretary of State to Minister Bowen.

APRIL 25.

This Government regards the course of the Venezuelan Government respecting the *Viking* as contrary to international law, and requests that the Venezuelan consul be directed to issue clearance papers or that those of the American consul be respected. The circumstances require prompt action.

HAY.

[Inclosure No. 2—Translation.]

No. 466.] UNITED STATES OF VENEZUELA, MINISTRY OF HACIENDA, DEPARTMENT OF CUSTOM-HOUSES AND SALT MINES,
Caracas, May 3, 1902.

To the VENEZUELAN CONSUL IN TRINIDAD:

The President of the Republic, as a temporary concession, and until the reestablishment of the normal trade with Caño Colorado, orders you to clear the ship that is used for carrying provisions to a certain number of workmen that the American company has stationed there. The clearance of the ship shall be done under your immediate inspection and with the understanding that on its return it shall furnish to your office that it has only carried provisions for the company. For this purpose it is agreed that you shall inspect the ship at the beginning and end of each trip.

This is done without any prejudice to the protest presented by the Government through the minister of foreign affairs against the act of the United States consul in unduly clearing the ship. Said protest is still pending. The concession is a special one for the company.

God and the Federation.

R. TELLO MENDOZA.

[Inclosure No. 3.]

The Secretary of State to Minister Bowen.

APRIL 30—4 p. m.

Advise Venezuelan minister that the United States Government is informed and understands that the port of Caño Colorado is in actual possession and control of insurgents. The inability of this Government to recognize any closure of the port by titular government unsupported by effective blockade is founded on precedents set by this Government during civil war and repeatedly asserted and constantly maintained ever since.

[Inclosure No. 4.]

The Secretary of State to Minister Bowen.

MAY 1—12 m.

Without waiving rights already claimed, say to Venezuelan Government that upon representations made to this Department that the men of the New York and Bermudez Company are without food and dependent upon the provisions on board the *Viking*, it is urged that after search for arms and ammunition the *Viking* be cleared with an innocent cargo for Caño Colorado either by the Venezuelan or American consul. Answer urgent.

[Inclosure No. 5.]

Minister Bowen to the Secretary of State.

MAY 4—6 p. m.

The plan suggested in your delayed cables, which arrived this morning, I suggested two days ago and it was accepted by the President yesterday very gracefully. The Venezuelan consul will now issue clearance papers to the *Viking* and inspect the ship before and after each trip, so as to see that only provisions are carried.

Minister Bowen to the Secretary of State.

No. 98.] LEGATION OF THE UNITED STATES,
Caracas, Venezuela, May 18, 1902.

Hon. JOHN HAY,
Secretary of State, Washington, D. C.

SIR: In answer to your instructions, No. 55, of April 17 last, directing me to report in regard to the charge preferred against me by the Hon. Frank Hiscock, I have the honor to inform you that when I heard the Warner-Quinlan company had secured an order from the court of first instance at Carupano authorizing the company to take possession of the Felicidad mine, I urged the Venezuelan Government to rescind the order on the ground that the case had been appealed from the lower court at Carupano to the superior court at Cumana, and thence brought to Caracas for a final decision by the court of cassation. It seemed to me that a petty court had no right, after the case had been taken away from it on appeal, to ignore the fact of appeal and transfer millions of dollars worth of property of American citizens by a simple stroke of the pen. The Venezuelan Government answered that it could not interfere with the procedure of the courts. No further correspondence has taken place between the Venezuelan Government and me on the subject, and at no time have I made any direct request of the courts. It was the Warner-Quinlan company itself, through its attorneys here, who prevented the order from being executed. The attorneys called on me the very day the Venezuelan Government notified me of its refusal to interfere, and I gave them a long and patient hearing, and I explained to them very carefully why I believed the order should be rescinded. The following morning I called on the senior attorney, and he then informed me that after his interview with me the previous day he had cabled to Mr. Quinlan not to execute the order and to return to Caracas.

I consider that my action was perfectly fair and just, and I believe that the course of the Warner-Quinlan company's attorneys in recalling Mr. Quinlan was in every respect highly commendable and legal.

I am, etc., HERBERT W. BOWEN.

Chargé Russell to the Secretary of State.

No. 230.] LEGATION OF THE UNITED STATES,
Caracas, December 6, 1903.

SIR: At the request of Mr. George W. Crichfield I have the honor to forward to you an affidavit sworn to by him.

On the 27th of November Mr. Crichfield came to me and said that he wanted to go to Maracaibo to look after his business interests,

and supposed the authorities would try and detain him on account of an order of the court in Caracas. Mr. Crichfield went to La Guaira on the afternoon of the 27th, intending to take the steamer of the 30th for Maracaibo. On the morning of the 30th I was notified that the collector of the port in La Guaira would not allow Mr. Crichfield to embark. I went to the foreign office and told the minister that the order of the court, as I understood it, prohibited Mr. Crichfield from leaving Venezuela; that he did not intend to leave Venezuela, but was going to Maracaibo. The minister immediately began an investigation, and called Mr. Crichfield's lawyer. The result of the conference was that the foreign minister said that the authorities were not detaining Mr. Crichfield, but, as the steamer on which he was going to Maracaibo touched at Curacao en route, the law required a bond for the amount of the suit pending, $8,000. Mr. Crichfield absolutely refuses to give bond, and there the matter rests. I know nothing but Mr. Crichfield's statement of the case pending in the court, but he has the best lawyer in Caracas, and the restraining order of the judge is in accordance with the law.

I am, etc.,

WILLIAM W. RUSSELL.

[Inclosure with dispatch No. 230 from Chargé Russell.]

CARACAS, VENEZUELA, *December 3, 1903.*

George W. Crichfield, of lawful age, being first duly sworn, deposes and says: That he is a natural-born citizen of the United States, and a citizen of the State of New Jersey; that he is general manager of the United States and Venezuela Company, at No. 1 Broadway, New York; that he holds the power of attorney of said company in Venezuela; that said company owns in the State of Zulia, Venezuela, an asphalt mine known as Inciarte, a railroad 27 miles long from said asphalt mine to the banks of the Rio Limoro, a large refinery and other works on the banks of said river, and that affiant personally supervised the construction of said railroad and all such works of the company.

Affiant further states that he has been held since the 23d of October of the present year, and is still being held by the authorities of Venezuela against his will and in spite of his protest, and that he has been prohibited by said authorities from leaving the country or from going to Maracaibo to attend to his business, greatly to his personal damage and to the damage of his company.

Affiant further states that the basis or cause for such detention, and the only basis or cause so far as he knows or has ever heard, is an order given by the judge of the first instance in Caracas, on the 23d of October, 1903, upon the petition or demand of one Cesare Urdaneta, a Venezuelan, residing in Caracas, wherein said Urdaneta claimed that the affiant owes to him, Urdaneta, the sum of $8,000 for commission alleged to be due him for the sale of an asphalt mine named La Paz, situated in the jurisdiction of Maracaibo.

Affiant further states that said suit of Urdaneta is utterly without foundation in law or equity; that this affiant does not and never did owe Urdaneta $8,000, or any other sum: that said sum was only to be paid in the event affiant purchased the said asphalt mine, La Paz, and that such purchase was never made.

Affiant further states that at the request of Urdaneta, and upon his representations that La Paz was a large and valuable mine, with good title, he, affiant, took an option on said mine, in the year 1900, but that upon examination, said mine proved to be worthless, and its pretended titles of no legal value, and that he, affiant, declined to exercise his option to purchase said mine for said reasons.

Affiant further states that his agreement with Urdaneta was clear and explicit; that he, affiant, would pay $8,000 to said Urdaneta only in the event that he, affiant, purchased said mine, and after the title to said mine had been legally transferred to him, affiant, and in no other event.

Affiant further states that notwithstanding these facts, said Urdaneta has undertaken, by threats, intimidation, and otherwise to collect from this affiant such sum of $8,000, and that he has instituted suit against this affiant for said amount.

Affiant further states that said judge of the first instance issued a peremptory order restraining this affiant from leaving the country, which, in effect, has been construed to prevent affiant from going to Maracaibo; that said order was made without hearing the answer of this affiant, or giving him any opportunity to answer, and that said order was made without requiring said Urdaneta to give any bond to indemnify this affiant for any damages which he might unjustly and unlawfully suffer by reason of such order.

Affiant further states that he has produced the following proofs before the judge of the first instance: (a) A certificate from the registro publico, of Maracaibo, where the titles of said mine, La Paz, are registered, declaring that the titles of said mines stand in the names of the original owners, and that no sale thereof had ever been made to this affiant according to the records of his office; (b) a letter from said Urdaneta wherein he stated that they had made a conditional contract (option) with affiant, with reference to said La Paz; (c) affiant's power of attorney of the United States and Venezuela Company; (d) the records of the department of fomento, showing that affiant has never purchased said mine.

Affiant further states that said Urdaneta has produced absolutely no proof whatever which shows or pretends to show that affiant owes or ever has owed to him, Urdaneta, $8,000, or any other sum whatever; that said Urdaneta has not even made a prima facie case, and that said Urdaneta's contention is absolutely and wholly without merit.

Affiant further states that he has petitioned the said judge of the first instance to rescind and revoke said order detaining this affiant, and prohibiting him, affiant, from leaving this country, but without avail.

Affiant further states that said Urdaneta is a wholly irresponsible and dangerous man; that he, Urdaneta, has made threats against the life of this affiant; that he, affiant, believes that said Urdaneta is likely to attempt to assassinate him, this affiant, and that he, the affiant, is being held by the order of the court and prohibited from leaving the country, although by remaining here he is exposed to grave personal damages, unless he, affiant, will pay $8,000, which he does not and never did owe. In consequence whereof affiant has suffered and is suffering serious damages not only to his business, but likewise to his health.

Affiant therefore claims and demands the sum of $50,000 from the Government of Venezuela in payment of the damages which he has already sustained by reason of such detention, and reserves the right to file additional claims for all further damages which may be caused him, either in his business, or in his health, growing out of the present affair, or of anything directly or indirectly connected therewith, or any further detention after this date.

And affiant would respectfully petition the Government of the United States of America, through the American legation in Caracas, to present his just claim for damages to the Government of Venezuela, and demand payment thereof, and take such further action as it may deem necessary and proper in relation thereto.

GEORGE W. CRICHFIELD.

LEGATION OF THE UNITED STATES,
Caracas, Venezuela, December 5, 1903.

Sworn to before me this day and year above written.

WILLIAM W. RUSSELL,
United States Chargé d'Affairés ad interim.

The Acting Secretary of State to Chargé Russell.

No. 161.] DEPARTMENT OF STATE,
Washington, December 11, 1903.

SIR: The President, at the request of Senator Hiscock, counsel for the Warner and Quinlan Asphalt Company, directs me to send you the statement inclosed herewith.

You will please furnish the lawyers of both parties to the asphalt controversy with copies thereof.

I am, etc., FRANCIS B. LOOMIS,
Acting Secretary.

[Inclosure.]

Statement.

The President desires that the Venezuelan Government shall not dispossess the New York and Bermudez Company by force, that the judicial proceedings be allowed to take their course, that when the case is finally decided by the court of last resort either party, the Warner-Quinlan Company or the Bermudez Company, if believing there has been a denial of justice, shall have the right to present to the Department of State a complete copy of the judicial proceedings and make its complaint of a final denial of justice; that in the meantime there should be suspension of proceedings in execution of final judgment, and that if the Department shall find on examination of the record that there has been a final denial of justice the whole matter shall be submitted to international arbitration. But if there shall be found to be no denial of justice the execution of the judgment shall have its course.

Mr. Bowen has been carefully instructed to pursue an absolutely impartial course between the different claimants.

Mr. Russell to Mr. Hay.

No. 234.] LEGATION OF THE UNITED STATES,
Caracas, December 13, 1903.

SIR: I have the honor to inclose a copy of a protest filed with me by Mr. George W. Crichfield against his being required to give a bond in a civil suit instituted against him in a local court.

Mr. Crichfield has given a bond and left this morning for La Guaira, where he will embark to-morrow for Maracaibo.

I am, etc.,

WILLIAM W. RUSSELL.

[Inclosure to No. 234.]

Mr. Crichfield to Mr. Russell.

CARACAS, VENEZUELA, *December 7, 1903.*

DEAR SIR: The judge of the first instance in Caracas to-day denied my application to have set aside and rescinded his order of October 23, holding me in Venezuela and restraining me from going about my business, in the suit of Cesare Urdaneta.

The judge fixed a bond of $9,000, and stated that upon my giving a bond in said amount, signed by Rivas, Fensohn & Co., he would permit me to leave.

I am thoroughly satisfied that unless I give such bond I stand in great danger of losing my life here. Under the order of said judge I would be held here indefinitely.

I protest against having to give such bond, and I consider it a colossal outrage. I repeat what I have heretofore stated to you, under oath, that the suit of the said Urdaneta is absolutely without merit in law or in equity. It is nothing more or less than an outrageous attempt at extortion and blackmail.

I therefore protest, earnestly and strenuously, against having to give such bond, and I only give it under compulsion, and, as I firmly believe, for the purpose of avoiding being assassinated, to which I would be constantly exposed by remaining under the restraining order of the judge of the first instance.

I further believe that as soon as I give such bond that it is the intention of the judge of the first instance to declare said bond forfeited and to collect the same from my bondsmen, notwithstanding that the unquestioned proof is already in the hands of said judge to the effect that I do not and never did owe said Urdaneta $8,000, or any other sum.

Therefore, as I am compelled by superior force to give such bond, or otherwise be held here for months or years or perhaps lose my life, I would earnestly petition the Government of the United States, through you, to take such steps as it may deem fit and proper to prevent the judge of the first instance from canceling said bond or col-

lecting the amount thereof from my bondsmen. I would further petition the Government of the United States that it may intervene for the purpose of seeing that justice is done to me in this case.

Respectfully, etc., GEORGE W. CRICHFIELD.

LEGATION OF THE UNITED STATES,
Caracas, December 8, 1903.

Sworn to before me and deposited the day and year above written.

[SEAL.] WILLIAM W. RUSSELL,
United States Chargé d'Affaires ad interim.

Chargé Russell to the Secretary of State.

No. 236.] LEGATION OF THE UNITED STATES,
Caracas, December 20, 1903.

SIR: I have the honor to inform you that the Federal court here has taken up the case of Warner & Quinlan against the New York and Bermudez Asphalt Company for the possession of the mine "Felicidad," and a decision will be reached about January 20.

I am, etc.,

WILLIAM W. RUSSELL.

The Acting Secretary of State to Chargé Russell.

No. 162.] DEPARTMENT OF STATE,
Washington, December 21, 1903.

SIR: I have to acknowledge the receipt of your No. 230, of the 6th instant, in relation to the claim of George W. Crichfield against the Government of Venezuela.

In reply I have to say that there is no ground for the interference of this Government. The proceedings in this case, which you indicate is in accordance with the law, appears to be similar to the practice which obtains in some of the States by which a defendant is compelled to give security to abide the decision of the court.

You may, however, urge a prompt disposition of the suit which is pending against Crichfield in the courts.

I am, etc., ALVEY A. ADEE,
Acting Secretary.

The Acting Secretary of State to Minister Bowen.

No. 163.] DEPARTMENT OF STATE,
Washington, December 29, 1903.

SIR: I have to acknowledge the receipt of Mr. Russell's No. 234, of the 13th instant, forwarding copy of the protest of Mr. George W. Crichfield against being required to give bond in a civil suit in a Venezuelan court.

The Department's No. 162, of the 21st instant, gives its views in regard to this case.

You will observe the further proceedings with a view to seeing that no injustice is done Mr. Crichfield.

I am, etc., ALVEY A. ADEE,
Acting Secretary.

Chargé Russell to the Secretary of State.

No. 239.] LEGATION OF THE UNITED STATES,
Caracas, January 3, 1904.

SIR: I have the honor to acknowledge the receipt of your No. 161, of December 11, inclosing a statement which the President, at the request of Senator Hiscock, counsel for the Warner & Quinlan Asphalt Company, had directed you to send to me, and to say that, in accordance with your instructions, I furnished copies thereof to the lawyers of both parties to the asphalt controversy.

I am, etc.,

WILLIAM W. RUSSELL.

Minister Bowen to the Secretary of State.

No. 241.] LEGATION OF THE UNITED STATES,
Caracas, January 9, 1904.

SIR: I have the honor to inform you that on the 7th instant I sent to the lawyers here of the Warner-Quinlan Asphalt Company and of the New York and Bermudez Company copies of the statement which the President, at the request of Senator Hiscock, counsel of the Warner-Quinlan Company, ordered to be delivered to them.

On the same day I received a letter from the lawyer of the Warner-Quinlan Company stating that neither as a Venezuelan nor as a lawyer can he accept any of the propositions contained in the statement, and rejecting the indication that the execution of the court's decision must be delayed until an appeal from it to the United States Government shall have been duly settled. I did not answer the lawyer's letter, but I respectfully suggest that you communicate to Senator Hiscock his remarks in order that the Senator may instruct him that the statement was sent at his (the Senator's) request and that therefore the Warner-Quinlan Company and its lawyers are bound to support it loyally and to make no request of the Venezuelan Government for execution inconsistent with the terms thereof.

I am, etc.,

HERBERT W. BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *January 28, 1904.*
(Received February 4, 1904—5.55 p. m.)

Unanimous verdict rendered to-day in favor of New York and Bermudez Company.

BOWEN.

Minister Bowen to the Secretary of State.

No. 253.] LEGATION OF THE UNITED STATES,
Caracas, Venezuela, February 6, 1904.

SIR: I have the honor to inclose herewith a translation of the decision handed down by the high federal court of Venezuela in the asphalt question.

I am, etc., HERBERT W. BOWEN.

[Inclosure.]

United States of Venezuela, high federal court, hall of original and sole jurisdiction, Patrick R. Quinlan and Charles M. Warner versus The New York and Bermudez Company.

Final decision handed down by the high federal court of Venezuela in the above action:

[Specially translated for the Venezuelan Herald.]

United States of Venezuela—in their name—the hall of sole instance of the federal court.

The court has viewed the proceedings, has heard the oral addresses and seen the written conclusions of the parties.

On the 16th of February, 1901, Drs. José de Jesús Paúl and Nicomedes Zuloaga, lawyers, the constituted attorneys of Patrick R. Quinlan and his tenant in common, Charles M. Warner, residents of Syracuse, State of New York, in the United States of North America, brought an action against the New York and Bermudez Company, to compel it to admit the validity of the title of an asphalt mine called "Felicidad," the property of their constituents, and in case the defendant company should not admit this, that the federal court should declare the validity of the said title, in conformity with its legal attributions and as a final judgment in the suit which they were instituting.

The plaintiffs based their action on the following grounds: 1. That the said mine, the property of Quinlan & Warner, is situated in the parish of Union, district Benitez, in the State of Bermudez, to the east of the place called Usirina, in the gulf of Paria, is bounded on all sides by wild lands and consists of 283 hectares which were granted to Messrs. Antonio Bianchi, Antonio Cervoni, José Francisco Micheli, and Mateo Guerra Marcano, on the 30th of November, 1897. 2. That the said mine was held by Messrs. Quinlan & Warner under conveyance thereof made to them by the original owners, of which conveyance the minister of fomento was notified. 3. That Messrs. Warner & Quinlan purposed to work the said mine, but that the New York and Bermudez Company pretends that the title of the "Felicidad" is not valid, alleging that the said mine is comprised within another mining concession, granted to it in the name of its secretary, Ambrose H. Carner, in the year 1888, and that by virtue of a contract made by the National Government with Horacio R. Hamilton in the year 1883, of which the New York and Bermudez Company is assignee, the National Government could not grant the mining concession "Felicidad."

The plaintiffs annexed to the demand certified copies of the title of mines, which the New York and Bermudez Company had obtained, and also of the title and plan of the wild lands which were granted to it for the working of its mine, which documents were marked with the letters C, D, and E; and they also annexed the title and plan of the mine "Felicidad," and also a superposition or transfer of the plan of the mine of the New York and Bermudez Company, to the plan of the mine "Felicidad," marked with the letter F. They also annexed No. 8105, of the Official Gazette, in which the governmental resolution of the 10th of December, 1900, appears, which contains the interpretation that the National Government gives to the Hamilton contract, with regard to the extent of his concessions, and likewise added two certified copies, marked with the letters G and H, of the petition and protest of the director of the New York and Bermudez Company relative to its pretensions which occasion the action.

Cognizance having been taken of the action at the political sitting [folio 19], it was ordered that it should go before the hall of first and sole instance, who in turn sent the matter on to the judge of substantiation, who is the president of this court.

On the 16th of March, 1901, Doctors Zuroaga and Paúl amended their action at the place where it says "alleging that the mine 'Felicidad' is comprised within another

mining concession, granted to the said New York and Bermudez Company in the name of its secretary, A. Howard Carner, in the year 1888" by saying "alleging that the mine 'Felicidad' is comprised within another mining concession granted to Howard Carner, secretary of the New York and Bermudez Company in 1888, and transferred by the said A. Howard Carner and his wife, Ida A. Carner, to the said company by a document recorded at Caracas under No. 32, at folio 33 of the first protocol, volume 2, for the fourth quarter of 1983, as appears from the certified copy which they annexed.

On the 18th of March, 1901, the president of the federal court, as judge of substantiation, ordered that the New York and Bermudez Company should be summoned and should appear to answer the action brought against it, and on endeavoring to effect service of the summons, it appearing that the defendant company was absent from the Republic, the said judge of substantiation, at the request of the plaintiff lawyers, ordered Mr. Henry Willard Bean to be summoned, as the constituted attorney of the New York and Bermudez Company, and at the hearing of the 28th of March, 1901, at the appointed hour, Mr. Bean appeared, and stated that he was the constituted attorney of the New York and Bermudez Company and that he appointed as his substitutes Doctors José Loreto Arismendi and Carlos Leon to represent the company in this suit, and it was therefore ordered that the said company should be summoned anew in the persons of the said Doctors Arismendi and Leon, who on the 17th of April, 1901, appeared and took the dilatory exceptions that the court was incompetent, that the plaintiffs' constituted attorneys were illegally appointed as their powers were wanting in the requisite formalities and were therefore null, and the exception that the necessary security had not been given to enable them to proceed to judgment.

On the 18th of April, 1901, the plaintiffs' lawyers, in writing, contradicted in their entirety the exceptions taken and the defendants' representatives having moved that evidence should be taken on the exceptions within the legal period, the plaintiffs opposed the motion on the ground that the exceptions taken were merely matters of law. By minute of the 23d of April, 1901, the court of substantiation decided that the point was not one of mere law, and therefore declared the issue open to evidence during the legal period.

By judgment of the 25th of May, 1901, the court of substantiation decided the issue, disallowing the exceptions that the court was incompetent, and that the plaintiffs' attorneys were illegally appointed, but allowing the exception for want of the necessary security in order to proceed to judgment, and fixed the amount of the security in 100,000 bolivars.

By instrument in writing dated the 28th of May, 1901, which appeared at folio 140 of the first part of the proceedings, the defendants' constituted attorneys alleged that the president of the court had not power to decide, himself alone, the exceptions taken; and for that reason, and reserving the right to appeal from his decision of the 27th of May, in so far as it disallows the exception of illegality in the appointment of the plaintiffs' constituted attorneys, they asked the substantiating judge to revoke that decision, thereby restoring the proceedings to a condition for beginning the hearing before the full court, or revising the judgment radically, to declare that the federal court had no jurisdiction whatsoever to take cognizance of the action instituted against the New York and Bermudez Company. This pretension of the defendants was disallowed by the substantiating judge, by minute of the 31st of May, 1901 (folios 145 to 147, first part). This decision having been appealed against by Dr. Carlos Leon (folio 148, first part) one of the constituted attorneys of the defendant, the appeal was heard, the proceedings being suspended, not only with respect to the essence of the motion mentioned, but also with respect to the exception of illegality in the appointment of the plaintiffs' constituted attorneys (reverse side of folio 2 and folio 3, second part).

The proceedings having been sent to the hall of sole instance of the federal court, the vice-president appointed for considering the appeal the sitting of the fourth day after receiving it, and the hearing having begun on the 18th of June, 1901 (reverse side of folio 5, second part), Dr. José Loreto Arismendi, one of the lawyers of the defendant appeared, and by an affidavit which he filed with the proceedings, dated the 25th day of June, 1901 (reverse side of folio 9, second part), set out textually "that Mr. Emilió J. Maury, as appears by the Official Gazette, is the concessionary of various asphalt mines situated in the jurisdiction of the former State of Bermudez; that the New York and Bermudez Company contends that all the titles which the National Government has granted for asphalt mines in that region of the Republic are void, having been issued in contravention of the Hamilton contract of which the said company is the assignee; and that inasmuch as Gen. Jacinto R. Pachano, one of the judges in the cause, was Mr. Maury's father-in-law, he therefore objected to him. By minute of the 26th of June, 1901 (folio 11, second part), the hall declared the objection to General Pachano inadmissible, it having been taken after the time allowed by law.

On the 19th July, 1901, as appears from the manifestation made to the court by Dr. Henry Willard Bean (obverse and reverse sides of folio 23, second part) as

the general constituted attorney of the New York and Bermudez Company, Drs. Manuel Clemente Urbaneja and Claudio Bruzual Serra entered upon the representation and defense of the said company and on the 7th of August, 1901, objected in writing (folios 34 to reverse side of folio 37, second part), relying on the reasons therein set forth, to all the members of the court, who by judgment of the 14th of August, 1901 (folios 41 to reverse side of 50, second part), declared the said objection inadmissible and at the same time confirmed in their entirety the decisions appealed against, that is to say, the decisions passed by the president of the court on the exceptions taken by the lawyers of the New York and Bermudez Company.

As the final result of all the objections which have been enumerated, those only were allowed which referred to the giving of the security demanded by the lawyers of the defendant and decreed and fixed by the judge of substantiation, which was at last arranged and given for the sum of 100,000 bolivars by Mr. Pedro Salas, a resident of this city.

The first, and what may be called a very laborious stage of this suit having been thus concluded, Dr. Manuel Clemente Urbaneja, one of the new constituted attorneys of the defendent, proceeded to answer the merits of the action. This took place on the 27th of September, 1901 (folios 75 to 79, second part). As essential points of that answer the defendant contradicted the action in all its parts on the ground that the action brought against it is contrary to law, as no obligation existed between the parties. It qualified the title of the mine Felicidad as inefficacious, as it suffers from defects which rendered it completely null. It alleged that such mine Felicidad is in fact nothing but a part or portion of the asphalt lake which the New York and Bermudez Company has legally possessed and exploited during the past fourteen years, alleging to the effect that in the parish of Union, in the district of Benitez, in the State of Sucre, there is no other known asphalt mine, except the asphalt lake which the Bermudez is exploiting; pleaded limitation in support of the title of the Bermudez; raised as preemptory exceptions the incompetence of the Federal court to intervene in this suit, and that the promoters of the action were the wrong persons to bring it, Charles Warner and Patrick R. Quinlan being distinct persons from the firm "Warner-Quinlan Asphalt Company," a company constituted by the promoters of the action for the purpose of exploring and exploiting asphalt mines in Venezuela, as a consequence of what they themselves declare in the power of attorney which they executed to Mr. Patrick Sullivan and which the latter transferred by way of substitution to the plaintiff lawyers Zuloaga and Paúl; and finally the defendants asked in their written answer for extra time for putting in their evidence, in order to obtain the testimony of Count Orsi de Mombello, resident of Turin, in the Kingdom of Italy; for the purpose of proving the affirmative interrogatories which they would put to Messrs. Warner and Quinlan, residents of Syracuse, State of New York, United States of America, and for the testimony of Mr. Ambrose H. Carner, resident at Kissingen, Bavaria, Germany. Doctor Urbaneja put in together with his answer written testimony taken before the parish judge, in order to prove the residence in Turin of Mr. Orsi de Mombello. The answer being terminated, the substanting judge advised the parties to come to an amicable arrangement, and as this did not take place, he declared the hearing terminated, and reserved his decision with respect to the request for extra time to put in evidence made by the defendants until after the evidence should have been called for (reverse side of folio 82 to reverse side of folio 83, second part).

When the cause was ripe for the taking of evidence both parties put in, in due time, all that they believed expedient for the defense and proof of their respective rights, the extra time having been granted which had been requested for that which had to be taken outside of the territory of the Republic, for which purpose the proper warrants, letters requisitional, and requests were issued as well as for that which had to be taken outside of this capital, in other districts of the Republic, as for that which had to be taken in various foreign countries. As evidence to be taken abroad the plaintiffs requested that Dr. Jesús Muñoz Tebar, engineer of the Republic, who was in Porto Rico, should make his declaration regarding the particulars of the interrogatory which they put in, and that P. S. Osborn, captain of the mercantile navy of the United States, should make his declarations in New York, where he was residing; and the defendant asked that Col. José Orsi de Mombello should make his declaration at Turin, Kingdom of Italy; that Mr. Ambrose H. Carner should make his declaration in Germany, and that the plaintiffs Charles M. Warner and Patrick R. Quinlan should answer in New York the interrogatories addressed to them; all which requisitions for evidence were duly complied with, with the exception of the testimony of Mr. Ambrose H. Carner, which was abandoned by the party requesting the same.

The evidence having been taken, and the expert work and ocular inspections asked for having been done and made, and the motions with regard to inadmissibility of witnesses and other motions which were made in the course of the time allowed for

putting in the evidence having been resolved and decided, and the defendant having abandoned the testimony of seventy-six of the eighty-six witnesses who, according to the instrument in writing in which he enumerated his proofs, dated the 10th of October, 1901, should have declared in various parts of the State of Sucre, in the former State of Bermudez; the taking of evidence in the cause was terminated, and thereupon Dr. Juan Bautista Bance, who from the 24th of September, 1901, had entered upon the representation of the New York and Bermudez Company (reverse side of folio 89, second part), by writing of the 19th of June, 1902 (folio 352, reverse side, fourth part), requested the court to send on the proceedings to the full hall in order that the statement of the case should begin in accordance with the law; and consequently, the proceedings having gone on to the full hall, the president by order of the 26th of June, 1902 (folio 353, reverse side, fourth part), fixed for hearing the cause the session of the eighth office day. At this stage one of the judges, Dr. Antonio Maria Planchart, withdrew himself by writing of the 27th of June, 1902 (folio 354, fourth part), from taking cognizance of the cause, on account of his having expressed his opinion. The withdrawal having been allowed by order of the 2d of July, 1902 (folio 355, fourth part), and a ballot having been effected for ascertaining who should replace him, Dr. José Santiago Rodriguez proved to be elected, but did not accept (reverse side of folio 355 to folio 357, fourth part), and a new ballot having been taken Dr. Carlos Jimenez Rebolledo was elected and he accepted the charge (folio 359, and reverse side, fourth part).

The hall having been thus completed, the statement of the cause began on the 11th of August, 1902 (folio 359, reverse side, fourth part), and terminated on the 23d of December, 1903, and as a legal vacation ought to begin the next day, the 24th of December, until the 6th of January of the present year, 1904, the third sitting after the termination of the vacation was fixed for the final addresses of the parties. It is expedient to remark that if the statement of this case has been prolonged for so great a time it was due less to the voluminousness of the proceedings than to the interruptions which have taken place owing to the death or resignation of some members of the court, which, by giving occasion to the entry of new judges, made it necessary to retrace the statement which was already begun. That delay was further lengthened in part by the legal vacations which came on and the objection raised by Dr. Nicomedes Zuloaga, the constituted lawyer of Warner and Quinlan, against Dr. Guillermo Tell Villegas Pulido, who had come to occupy the post of president, which became vacant by the death of Gen. Jacinto R. Pachano, which took place on the 17th of July, 1903.

Toward the end of November, 1903, and when the statement of this case was drawing to a close, the member Dr. Guillermo Tell Villegas Pulido separated himself from the court, by resignation, and this circumstance gave rise to a new interruption, which continued until the hall was completed by the entrance of the cojudge Dr. Eduardo Péres Benitez, when the view was fixed anew, by order of the 4th of December, 1903.

In the course of the suit, and up to the final addresses, the parties have produced and put in as means of proving their respective contentions, as each side understands the matter, the following documents: 1. Plan of the asphalt lake and lands, the property of the New York and Bermudez Company, made by the engineer, J. Orsi de Mombello, dated at Barcelona the 23d of October, 1888. 2. Plan of the asphalt mine called Felicidad, made by Pedro Vicente Felce, public land surveyor, dated at Guariquen the 12th of September, 1897. 3. Plan of the asphalt mine "Venezuela" made by Heriberto Imery, public land surveyor, dated at Carupano, the 17th of October, 1900. 4. Plan of the mining concessions New York and Bermudez Company and the "Felicidad" and denunciation of the "Venezuela" made by the engineer and technical inspector of mines of the Republic, Dr. Tomas C. Llamozas, dated at Caracas the 22d of August, 1900. 5. Plan of the mining concession "New York and Bermudez Company" and the "Felicidad," made by Dr. German Jimenez, engineer, dated at Caracas the 5th of November, 1900. Doctor Jimenez was one of the members who, as representative of the Bermudez, formed part of the commission of three engineers whom the Government by executive resolution, dated the 16th of September, resolved to send to the site of the mines in dispute in order to fix their respective situations. 6. Plans of the asphalt mines situated to the southeast of the village of Guariquen made by Dr. Jesus Muñoz Tebar, engineer, who proceeded as a member of the commission already named and as representative of the "Felicidad." The correctness of the plans of Doctors Jimenez and Muñoz Tebar is certified by Dr. Luis Julio Blanco, engineer, who as the representative of the Government, formed part of the said commission. 7. Plan which is a superimposition of those made by Doctors Llamozas Jemenez, Muñoz Tebar and Land Surveyor Felce.

As all the most notable details of this suit have been now enumerated in the most minute manner, since many of them are only simple details which do not affect the merits of the case, this high court now enters upon the stage of investigation and

deductions which should naturally concur, together with the circumstances and data of the proceedings in the formation of that legal criterion, which should prevail in definitely solving this controversy, and it is to be observed that in order to proceed with the greatest certainty possible in the endeavor to arrive at the end indicated, it is necessary, in the present case, to take into account all the antecedents and judicial facts, which are more or less intimately related, directly and indirectly, with the contentions which are being discussed.

At the head of those judicial facts which can be considered classic and primordial, for its importance in this suit, stands the contract entered into between the National Government of the United States of Venezuela and Mr. Horacio R. Hamilton, on the 15th of September, 1883, augmented by an article on the 19th of October of the said year, and further augmented by three articles on the 30th of May, 1884, and approved by the National Congress by a law passed on the 6th of June of the said year 1884. Afterwards, Mr. Hamilton, in exercise of the power granted to him by article 10 of the said contract, transferred and granted the same to the corporation or company "New York and Bermudez Company" which, on becoming the assignee of the said contract, became thereby substituted in all the rights and obligations acquired and contracted by the grantor. This contract therefore became and continues to be the sole primitive and principal source from which emanated, so to say, the exclusive right for the assignee company to explore, exploit, and export all the natural products of the forests existing in unreclaimed lands of the former State of Bermudez, in the terms of article 1 of the contract, and in the identical way, it acquired, in the tenor of article 2, the right to exploit the asphalt in all the territory of the State, but only for the term of twenty-five years fixed by article 8 of the contract in question, and without the National Government being able within the lapse of that time, to grant like concessions as regards the State of Bermudez to any other person.

The idea has been thrown out that the Hamilton contract only granted to the contractor, or those claiming under him, a simple right of preference in the discoveries which they should make of mines or other products on the lands comprised in the contract. Such an interpretation can not be rationally sustained, because in whatever way things are considered in the case before us, the result will always be that the Hamilton contract is clothed with all the forms and engenders all the consequences of a privilege granted to the contractor and to his assigns in order that they alone, during the prescribed time, might be able to exploit the asphalt and other natural products which should be found in the territory covered by the contract, exception being made of the old section of Barcelona so far as regards the exploitation of woods. And the contract is in full force, since even although the National Government, by and of itself, by resolution of the ministry of fomento, dated the 4th of January, 1898, declared its termination, owing to the cessionary company not having executed the obligations which it had contracted to perform, the said resolution, on the petition of Dr. Carlos Leon, the constituted attorney of the New York and Bermudez Company, was declared null and void, as an act of usurped authority, by the then federal high court, by its decision of the 23d of August, 1898, and consequently the Hamilton contract retained all its legal effect. It must be observed that this resolution of the ministry of fomento was preceded by a petition, which Dr. Arturo Ayala, acting as constituted attorney of Messrs, Mateo Guerra Marcano, Antonio Bianchi, José Francisco Micheli, and Antonio Cervoni, the original cessionaries of the "Felicidad" mine, addressed to the ministry of fomento, under date the 3d of January, 1898, praying that the Hamilton contract should be declared terminated because neither the contractor nor his assigns had complied with the obligation which, among others, he had entered into of canalizing one or more rivers of the State of Bermudez, commencing by the Caño Colorado and Guarapiche. The like proceeding on the part of the constituted attorney of the original cessionaries of the mine "Felicidad" clearly demonstrated that the latter considered the existence of the Hamilton contract as an insuperable obstacle to the legitimate and perfect acquirement and the peaceful exploitation of their mining concessions and likewise also of any other concession which might have been or might be granted them in contravention of the stipulations of the Hamilton contract.

On the 17th of July, 1900, as appears from the Official Gazette, No. 8105, put in evidence by the constituted attorneys of the "Felicidad," Mr. Ambrose H. Carner, acting as director of the New York and Bermudez Company, had recourse to the ministry of fomento asking that the definitive title of the mine "Felicidad," granted by the National Government on the 30th of November, 1897, should be declared null, and also raising objection to the granting of the definitive title of another asphalt mine called "Venezuela." The New York and Bermudez Company alleged, as the ground for its petition, that both mines were situated within the limits of the mining concession and the belt of land of which it was the owner, by virtue of a title granted on the 7th and 14th of December, 1888, and alleged, in the same way, that the contract

made by the National Government with Mr. Hamilton, of which contract the company is assignee, conceded to it the exclusive right to exploit asphalt in the old State of Bermudez.

By resolution of the 18th of December, the minister of fomento refused the petition of the New York and Bermudez Company, adducing therefor, among other reasons:

1. That the contract made by the National Government with Mr. Horacio R. Hamilton does not concede to the cessionary company the exclusive right to exploit the asphalt existing in the old State of Bermudez, because no such monopoly was stipulated in the contract, and monopolies can not be presumed;

2. That according to the plans made by the commission of engineers whom the Government resolved to send to the site, the situation of the mine in question, was distinct, inasmuch as there was a difference in their respective distances from the village of Guariquen;

3. That even in case there were perfect agreement between the real situation of the asphalt lake which the Bermudez exploits, and the title granted in its favor, it could nevertheless raise no objection to the rights of third parties, because no boundaries were set out in the title deed; and

4. That in order that the Hamilton contract should confer the monopoly for the exploitation of asphalt in the old State of Bermudez it would have been necessary to previously repeal the law of mines then in force.

It has been desired to attach great importance to this resolution of the ministry of fomento for the purposes of this suit, the fact being that it is only a simple administrative decision of equal value with the resolution of the same ministry dated the 4th of January, 1898, which sought to declare the termination of the Hamilton contract, and this is so because, even admitting that the said contract collided with the national constitution and the law of mines, or that it ought to be rescinded on account of the contractor and those claiming under him not having fulfilled their obligations, such circumstances in no way alter the nature or the judicial effects of the contract, inasmuch as that collision or that recission are not legally declared by the competent authority. It is therefore understood that the New York and Bermudez Company has had perfect right to say, whether in their petition to the ministry of fomento dated the 17th of July, 1900, or in the written objection taken by Dr. José Loreto Arismendi against Gen. Jacinto R. Pachano, or in various parts of the proceedings, and even in the last verbal addresses of its defense, that in accordance with the terms of the Hamilton contract, of which it is cessionary, the National Government had no power to grant titles to mines in the old State of Bermudez to any other person or corporation in contravention of the terms of the contract.

In consideration whereof, and

1. Whereas by virtue of article 2 of the contract made by the National Government with Mr. Horacio R. Hamilton on the 15th of September, 1883, of which the New York and Bermudez Company is cessionary, the said company acquired the exclusive right to exploit the asphalt existing throughout the old State of Bermudez;

2. And whereas the New York and Bermudez Company has the right to continue that exploitation until the expiration of the term of twenty-five years fixed by article 8 of the contract of which it is cessionary;

3. And whereas in accordance with the expressed tenor of said article 8 already mentioned, the National Government could not give the title of the mine "Felicidad," nor grant in the old State of Bermudez mining concessions of asphalt to any other person or corporation, in contravention of the terms of the contract;

4. And whereas the Hamilton contract having acquired the character of a law of the Republic by receiving the approval of the National Congress, that contract created for twenty-five years a special situation for the exploitation of the asphalt and other natural products existing in the old State of Bermudez, or, in other words, the New York and Bermudez Company alone had the right to make that exploitation in a general manner in the terms of the contract and during the time prescribed;

5. And whereas the title of the mine "Felicidad" was granted on the 30th of November, 1897, and twenty-four days thereafter, that is to say, on the 3d of January, 1898, the original concessionaires of the said mine, Cervoni, Bianchi, Micheli, and Guerra Marcano, had recourse through their constituted attorney to the ministry of fomento praying that the Hamilton contract should be declared terminated, a circumstance which, as already hinted, showed that the said concessionaires felt the assurance that the existence and validity of the mine "Felicidad" could not be maintained while the stipulations of the Hamilton contract, of which the New York and Bermudez Company is cessionary, were in force, and in this way making the fact explainable, that the concessionaires Bianchi, Cervoni, Micheli, and Guerra Marcano, on transferring and selling the mine "Felicidad" to Messrs. Warner and Quinlan, declared in the deed of sale, which has been put in evidence, that they made the sale at the risk of the purchasers and without any responsibility.

6. And whereas with respect to the exception of incompetency of the court, taken as a peremptory exception by the constituted attorneys of the defendants, in their answer to the action, this hall holds the same opinion which led it to confirm the decision appealed against by the substanting judge who disallowed the same when it was raised as a dilatory exception.

7. And whereas as to the exception also taken as peremptory by the defendants, that the plaintiffs Warner & Quinlan were but the persons who should have sued, as they must be considered distinct persons from the company "Warner, Quinlan Asphalt Company," this court is of opinion that there is no object in deciding thereon after the reasons which have just been set forth.

8. And whereas the question of investigating whether, according to the testimony of the witnesses and the documents of title and the plans put in, the mine "Felicidad" and the asphalt lake which the Bermudez is exploiting are two distinct things or whether one is part of the other, has no essential importance, since whatever be the situation what has just been said remains intact, namely, that in the territory of the old State of Bermudez no mining concessions of asphalt can be given while the right remains in force for the general exploitation of asphalt which, in that territory, belongs to the New York and Bermudez Company under the Hamilton contract.

9. And whereas in addition to the grounds expressed, the title of the Felicidad suffers from defects which vitiate it, and which are recorded in the proceedings, owing to the requisite prescriptions and solemnities not having been complied with, under pain of nullity, provided by the Code of Mines, defects which, pursuant to article 1279 of the Civil Code, which says: "The defects of an act which is absolutely void for want of solemnities can not be made to disappear by any confirmatory act except those solemnities are observed," can not be amended.

For the reasons expressed, administering judgment in the name of the United States of Venezuela, and by authority of the law, this action is dismissed, without any special order as to costs.

Given at the office of the hall of sole instance of the Federal court, at the capitol in Caracas, this 28th day of the month of January, 1904, year ninety-third of the Independence and forty-fifth of the Federation.

MANUEL M. ITURBE, *President.*
P. HERMOSO TELLERÍA, *Vice-President.*
ANTONIO ZÁRRAGA, *Reader.*
E. GÓMEZ R., *Chancellor.*
E. GONZÁLEZ HERRERA, *Member.*
S. TERRERO ATIENZA, *Member.*
L. PÉREZ BUSTAMANTE, *Member.*
E. BALZA DÁVILA, *Member.*
P. MATA ILLAS, *Member.*
EDUARDO PÉREZ BENÍTEZ, *Co-Judge.*
RAIMUNDO I. ANDUEZA, *Secretary.*

At to-day's sitting, at 11.05 a. m., the preceding judgment was published with due legal formality.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *June 14, 1904.*
(Received June 17, 1904—12.52 p. m.)

Manager Bermudez Company informs me Venezuelan Government threatens suit unless company pay $10,000,000 to the Venezuelan Government. I advised him pay nothing, defend rights in courts, publish facts; company's policy should be honest and fearless.

BOWEN.

Mr. Bowen to Mr. Hay.

No. 300, Confidential.] LEGATION OF THE UNITED STATES,
Caracas, Venezuela, June 25, 1904.

SIR: I have the honor to inform you that President Castro has decided to make the New York and Bermudez Company pay him an

enormous sum of money or to seize its asphalt lake. His intention first became apparent when the newpapers of Caracas, a short time ago, began to attack the company. The manager of the company, familiar with Venezuelan methods, inquired of the minister of the interior what was wanted of the company. He was told 50,000,000 bolivars. The newspapers then stopped their fusilade, in order that the manager might ponder the situation coolly and carefully. Finally he asked my advice. I urged him to refuse to be blackmailed, to defend his company in the courts, and to publish the facts in the case to the world. It seems that President Castro threatens that if the money is not paid an action will be brought in the courts to dispossess the company, and evidence will be forthcoming proving that the company aided the Matos revolution, and is using lands for its railway that do not belong to it. An American by the name of Carner, who was formerly employed by the company and then discharged after he had made himself obnoxious, has been here lately, and has supplied President Castro with information about the assistance the company gave to Matos and about the title to the railway lands. Carner's objects are evidently revenge and profit. The President also has probably some letters that were written by the company's agent in Trinidad to the revolutionary leader, Ducharm, who, when the revolution was suppressed, became friendly with President Castro, and now holds a very remunerative position. I told the manager that if the case goes to the courts no worse punishment can be inflicted on the company for aiding Matos than can be imposed on the thousands of others that supported the hapless chief, and that if the Hamilton concession can not be shown to cover the railway lands the law of prescription must be respected.

President Castro, in order to complete his work of intimidation, has stated lately that he has been assured that the Department of State in Washington will not interfere in this controversy. The idea of making that statement was probably suggested to him by the presence here of a Mr. Solomon, an active coadjutor of the man Carner, and duly accredited representative of the New York Tribune, which, of course, is known here to be very close to the Administration at Washington. The company, I believe, has decided not to pay the 50,000,000 bolivars, but I am not sure it will refrain from paying some smaller sum. It should not pay a cent. It is now time for our American companies in Venezuela and in all other republics of South and Central America to change their policy. I have never known one of them to conduct its relations with this Government in an honest way. The larger the company the larger has been its bribes and the more it has submitted to blackmail. If the books of the New York and Bermudez Company and of the Warner-Quinlan Company could be inspected I believe they would show an appalling amount of corruption, but the fault is not wholly theirs. It is only after they have invested their capital here that our companies learn that the general policy of the Venezuelan authorities toward all foreigners is one of deception, intimidation, and spoliation. They feel they must protect their own, and they are in doubt whether the Government of the United States will protect them opportunely. If our citizens alone were molested we might afford to be patient, but complaints and reports are constantly being sent by my colleagues *here to* their respective governments. As those complaints and

reports accumulate the danger of foreign complications increases. To that danger Venezuela is almost indifferent, for she believes that when a crisis is reached her sovereignty and territory will be kept intact by the United States, and that she will soon be free again to exploit foreigners. There can be no doubt that the effect of that belief is very demoralizing to Venezuela. * * *

I am, etc.,

HERBERT W. BOWEN.

The Acting Secretary of State to Minister Bowen.

No. 210.] DEPARTMENT OF STATE,
Washington, July 19, 1904.

SIR: Your confidential dispatch, No. 300, dated June 25 last, has been received and read with interest.

The Department desires to be kept fully informed respecting the demands of the Venezuelan Government upon the New York and Bermudez Asphalt Company for 50,000,000 bolivars.

I am, etc.,

FRANCIS B. LOOMIS,
Acting Secretary.

Mr. Bowen to Secretary of State.

[Telegram.]

Confidential.] CARACAS, VIA HAITI, *July 23, 1904.*
(Received 12.40 p. m.)

Venezuelan Government placed embargo at the opening Bermuda Lake yesterday, and appointed Carner custodian, as Bermuda Company refused submit to blackmail. Pressure should be brought to bear by our war ships at La Guaira, and custom-house should be seized if necessary. I have not made protest, but await your instructions, which I hope will be in the nature of an ultimatum.

BOWEN.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *July 24, 1904.*
(Received July 26, 1904—10.10 a. m.)

Venezuelan war vessel *Bolivar* started yesterday with Carner on board, obtain possession of Bermuda Lake. We should have fleet here prepared to seize La Guaira and Puerto Cabello, and get full satisfaction for Bermuda Company, and for other foreign corporations Venezuelan Government is attacking. Prompt and energetic action necessary.

BOWEN.

Mr. Bowen to Mr. Hay.

No. 309, Confidential.] AMERICAN LEGATION,
Caracas, Venezuela, July 24, 1904.

SIR: I have the honor to inclose herewith a copy of my cablegram to you of the 22d instant relative to the embargo of the New York and Bermudez asphalt lake, a copy of the libel, and a copy of the protest of the manager of the New York and Bermudez Company. The proceedings were ex parte. Yesterday the Venezuelan gunboat *Bolivar* left La Guaira with the man Carner on board to take possession of the asphalt lake. I think an American fleet should be sent to La Guaira at once. If the asphalt lake is not returned to the American owners within twenty-four hours after the arrival of the fleet at La Guaira, I advise that the custom-house be seized there and also the one at Puerto Cabello, and that both of them be held until full satisfaction shall have been obtained by us, and agreements made that will put a stop once and for all to the illegal attacks of President Castro on foreign corporations established in Venezuela. Since I sent my said cablegram to you he has demanded 12,000,000 bolivars of the British railway company at Puerto Cabello, and the transfer to him of the British Central Railway for the ridiculous sum of 1,000,000 bolivars; and he has begun proceedings to blackmail the British company that owns the railway from Caracas to La Guaira. He is annoying the Germans, I understand, at Ciudad Bolivar, and the only wealthy Italian landowner in Venezuela has been notified not to cut any wood on his property nor raise any crops. He is also attacking the French Cable Company, and some time ago he demanded the recall of the French minister, who had done nothing except protect French interests with due energy, and who, consequently, will be retained here by the French Government. Moreover, President Castro is oppressing his own people to such an extent that another revolution is talked of as a certainty in the near future. In fact there has already been some fighting in Coro. Some think that President Castro is anxious for foreign complications, so as to keep his own people from rising against him, while others believe that he wishes to ally himself closely with Colombia and make trouble in Panama.

* * * * * * *

I am, etc.,

HERBERT W. BOWEN.

[Inclosure to No. 309.]

Mr. Bowen to Secretary of State.

[Telegram.]

Confidential.]

JULY 22, 1904.

The Venezuelan Government placed embargo on Bermudez Lake yesterday, and appointed Carner custodian, as Bermuda Company refused to submit to blackmail.

Pressure should be brought to bear by our warships at La Guaira, and the custom-house should be seized, if necessary.

I have not made protest, but await your instructions, which I hope will be in the nature of an ultimatum.

BOWEN.

[Inclosure to No. 309.

Mr. Wright to Mr. Bowen.

CARACAS, VENEZUELA, *July 22, 1904.*

SIR:—The undersigned, managing director of the New York and Bermudez Company, and owner of 10 shares of the capital stock thereof, respectfully appears before you and most solemnly and sincerely protests against the Government of Venezuela, the federal court and court of cassation of Venezuela, the attorney-general of Venezuela, the minister of internal affairs of Venezuela, and any and all other persons concerned, for their unjustifiable, inequitable, and illegal ex parte actions in placing an embargo on the property of this company and appointing a custodian thereof during litigation, without having served any writ, summons, or notice on said company or its representatives of such intended action; and for not giving said company any opportunity to appear in court and contest such action; and particularly for the appointment of A. H. Carner as custodian, said Carner not being a stockholder of record in the New York and Bermudez Company, and if said Carner holds any stock of said Company by assignment it bears on its face the proof that said assignment is of no value until registered on the books of the company, said Carner being, moreover, notoriously antagonistic to said company.

It appears that this summary action has been taken on the ground that the Hamilton contract is a contract of rental and the Government of Venezuela has so averred in its demand; but a mere inspection of the contract itself shows that this is not the case, and it being therefore a question of law and interpretation of a contract, the question should have been tried in open court before any such summary action was taken.

As a stockholder in said company, and as the legally appointed representative of all the stockholders and bondholders of said company, I call upon you in the name of the New York and Bermudez Company to demand of the Venezuelan Government that it refrain from any interference with the property of this company in Venezuela, and failing this to call upon the Government of the United States of America to prevent by whatever means it deems suitable, this unjust, inequitable, and illegal spoliation of the property of this American corporation.

So far as the undersigned has any official knowledge, no suit has yet been brought against this company in the premises.

CARACAS, 11 a. m., July 22, 1904.

ROBERT K. WRIGHT,
Managing Director, New York and Bermudez Company.

[Inclosure to No. 309.]

Mr. Bowen to Secretary of State.

[Cablegram sent July 24, 1904.]

Venezuelan war vessel *Bolivar* started yesterday with Carner on board to obtain possession of Bermudez Lake. We should have fleet here prepared to seize La Guaira and Puerto Cabello and get full satisfaction for Bermudez Company and for other foreign corporations Venezuelan Government is attacking. Prompt and energetic action necessary.

BOWEN.

[Inclosure to No. 309—Translation]

Citizen judge of first instance of the federal and cassation court: I, Dr. F. Arroyo Parejo, attorney-general of the nation, acting in this character, before you, with due respect, show: Mr. Horace R. Hamilton made a contract of lease with the minister of fomento, duly authorized by the President of the Republic, for the purpose of exploring and exploiting the natural products existing on the wild lands of the former State of Bermudez, and also for the purpose of taking therefrom woods for building, furniture making, and others useful for industry, and resins, plants, and aromatic seeds. The right was also granted to the contractor to exploit the asphalt deposits which are situated within the territory of the said State. (Articles 1 and 2.) The said contract, which is dated the 15th day of September, 1883, was added to on the 19th day of October of the same year with the object of fixing the duties which the contractor should pay for the several kinds of wood which he might take and export. By a

second additional clause, which is dated the 30th day of May of the following year, Hamilton entered into the obligation to canalize one or more rivers of the State of Bermudez, commencing with the Caño Colorado and Guarapiche as far as Maturin, for the purpose of facilitating importation and exportation. The Government granted various other concessions to the contractor at different dates, as can be observed from the text of the contract itself, which is inserted in the Official Gazette, No. 8259, which I produce. Both the contract in question and its annexes were approved by the National Congress on the 6th day of June, 1884. Hamilton afterwards assigned all his rights and obligations under the said concession referred to to the New York and Bermudez Company, an incorporated company, established in New York, United States of North America, which assignment was accepted by the Government of the Republic through the channel of the ministry of fomento and after the favorable report of the department of territorial wealth of the said ministry, on the 9th day of December of the year last mentioned.

Twenty-one years have elapsed since the above-mentioned company entered upon the enjoyment of the Hamilton concession, and during this long period of time, notwithstanding that the said concession is one of the most extensive and favored that has been granted by the Government of Venezuela, the said company has restricted itself solely and exclusively to the exploitation of an asphalt lake discovered within the territory of the State of Bermudez, neglecting entirely to fulfill the other obligations stipulated in the contract. There is no doubt that the company has thought that the exclusive exploitation of the asphalt, which offers greater facilities and produces more enticing returns than that of other natural products, was a convenient way of executing the contract; but this singular judgment can not be shared by the Government, who sees one of the most productive branches of the national wealth rendered unprofitable, to the evident damage of the public interests. As a matter of fact, the exploitation of the natural products of the State of Bermudez, other than asphalt, has remained stationary for upward of twenty years, and the Government finds it impossible to activate it, on account of its obligation toward the company. Such a situation has become unbearable. The New York and Bermudez Company can not pretend that the exploitation of the natural products to which the contract relates was simply a right which it could renounce at its own will. A like interpretation would be absurd, because it would adjudge to one of the parties all the advantages and impose all the burdens on the other. It is well known that every right is the correlative of an obligation, and in the case in question the clauses of the contract show clearly that by the concessions which the Government made to the original contractor they purposed to obtain immediate benefits in return, such as were those of fostering the progress of the State of Bermudez by all the means which are developed by a great enterprise; of canalizing its rivers and adapting them to navigation, and, lastly, of receiving the duties which were expressly fixed for the exportation of natural products. The company rendered those objects nugatory by its proceedings; and it has ignored its obligations and made it impossible to continue the contract. Furthermore, the exploitation of the asphalt itself, the only natural product which the company exports, is carried on on so small a scale, as will be proved in the suit, that the profits which the Government derives therefrom are so insignificant as to be ludicrous.

On the other hand, the New York and Bermudez Company has not, in compliance with its obligation, canalized any of the rivers of the State of Bermudez, an improvement which was expressly agreed upon in the contract made with Mr. Horace R. Hamilton; and as in spite of the steps taken by the Government to obtain of the company the strict fulfillment of the contract, it has not been able to succeed in effecting an amicable arrangement, I have received precise instructions to sue, as I in fact do, with all legal formality, and relying on article 1137 of the civil code, the New York and Bermudez Company, an incorporated company, established in Philadelphia, and domiciled in this city, in the person of its representative, Mr. Robert Kemp Wright, adult and a resident, to the end that he consent to the dissolution of the contract made by the minister of fomento with Mr. Horace R. Hamilton on the 19th of October, 1883, approved by the National Congress on the 6th of June, 1884, and of which it is cessionaire; that it pay the nation for the damages which have been caused to the latter by the failure to execute the said contract, according to the just finding of appraisers, and calculated in accordance with the bases established by the first additional article; and that it also pay the expenses occasioned by these judicial proceedings. And as to the contract made with Mr. Horace R. Hamilton, it is a contract of lease, the subject-matter of which is the enjoyment of all the natural products existing on the wild lands of the former State of Bermudez; and from the instrument of proof and telegram which I annex it is clearly demonstrated that the lessee has omitted to make improvements which by the contract it is bound to make, such as the canalization of the rivers of said State. In conformity to the seventh particular of article 373 of the Code of Civil Pro-

cedure, I move for a decree of sequestration of the mine which the company exploits at the place called Guanoco, in the jurisdiction of the State of Bermudez, together with all the apparatus and appurtenances of the exploitation, to answer the results of this suit. In accordance with the said mentioned article I move that the person whom I shall in due time designate be appointed receiver. I consequently pray the citizen judge to admit the present action, substantiate it in accordance with law, and give a definitive judgment for the plaintiff, together with the costs, and to make the other legal orders. It is justice.

Caracas, twentieth of July, one thousand nine hundred and four

F. ARROYO PAREJO.

(This signature is over a stamp of 1 bolivar. There is a seal which says "United States of Venezuela, Office of the Attorney-General of the Nation.")

The subscriber, the secretary of the chamber of resolutions of the tribunal of the first instance of the federal and cassation court, certifies the correctness of the preceding copy.

Caracas, twenty-first of July, one thousand nine hundred and four.

JUVENAL ANZOLA.

(The signature "Juvenal Anzola" is written across two Venezuelan postage stamps of the value of 1 bolivar each.—TRANSLATOR.)

Federal and cassation court. Tribunal of first instance. Twenty-first of July, one thousand nine hundred and four. 94 and 46.

Mr. Robert Kemp Wright, resident of this city, representative of the New York and Bermudez Company, shall appear before this tribunal on the tenth court day at 9 o'clock in the morning, after having been cited, to answer this action. He shall give the porter a receipt for this copy.

J. Y. ARNAL.

(The preceding copy is engrossed on five sheets of Venezuelan sealed paper of the seventh class of the value of 1 bolivar each.—TRANSLATOR.)

[Inclosure to No. 309.—Translation.]

Citizen President of the Federal and Cassation Court in Your Character as Judge of First Instance:

I, Robert Kemp Wright, managing director in Venezuela of the "New York and Bermudez Company," before you respectfully show:

I have unexpectedly learned that there is an action in your court with reference to the contract made by the Government with Mr. Horace R. Hamilton, of which the company I represent is cessionaire, which action was instituted by the attorney-general of the nation in the latter's name, and he asks, furthermore, the sequestration of the mine or asphalt lake and its appurtenances which the company owns and exploits in the municipality of Union (Guariquen) in the district of Benitez, State of Bermudez; and I have learned—with surprise—that the said sequestration was decreed yesterday, Mr. Ambrose H. Carner being appointed receiver.

I say with surprise, because, although I have not yet read the decree for sequestration, the action and the petition for sequestration induce me to believe that the latter is based on No. 7 of article 373 of the code of civil procedure, and this being so, it can not be more contrary to law.

As a matter of fact, the plaintiff found himself obliged to pervert the nature of the contract in question, setting it forth purely and simply as a contract of lease; and he did this with the deliberate purpose of bringing the petition for sequestration within the scope of said No. 7, article 373, of the code of civil procedure. In order to understand this, it suffices to read the declaration and the contract; the latter has no characteristic whatsoever of a lease, and now that the pretension of the plaintiff is seen to be such, it will be of the utmost importance to the suit to elucidate this point.

It is absolutely necessary that the precautionary measure of sequestration in the case of a lease, when it is requisite, should be grounded on a contract that is undisputably a lease—that is to say, that it has been accepted by the parties as a lease. To suppose anything else would be to establish the possibility of anyone whomsoever bringing forth a contract of emphytousis, vivum vadium, sale, lean in kind on security,

second additional clause, which is dated the 30th day of May of the following year, Hamilton entered into the obligation to canalize one or more rivers of the State of Bermudez, commencing with the Caño Colorado and Guarapiche as far as Maturin, for the purpose of facilitating importation and exportation. The Government granted various other concessions to the contractor at different dates, as can be observed from the text of the contract itself, which is inserted in the Official Gazette, No. 8259, which I produce. Both the contract in question and its annexes were approved by the National Congress on the 6th day of June, 1884. Hamilton afterwards assigned all his rights and obligations under the said concession referred to to the New York and Bermudez Company, an incorporated company, established in New York, United States of North America, which assignment was accepted by the Government of the Republic through the channel of the ministry of fomento and after the favorable report of the department of territorial wealth of the said ministry, on the 9th day of December of the year last mentioned.

Twenty-one years have elapsed since the above-mentioned company entered upon the enjoyment of the Hamilton concession, and during this long period of time, notwithstanding that the said concession is one of the most extensive and favored that has been granted by the Government of Venezuela, the said company has restricted itself solely and exclusively to the exploitation of an asphalt lake discovered within the territory of the State of Bermudez, neglecting entirely to fulfill the other obligations stipulated in the contract. There is no doubt that the company has thought that the exclusive exploitation of the asphalt, which offers greater facilities and produces more enticing returns than that of other natural products, was a convenient way of executing the contract; but this singular judgment can not be shared by the Government, who sees one of the most productive branches of the national wealth rendered unprofitable, to the evident damage of the public interests. As a matter of fact, the exploitation of the natural products of the State of Bermudez, other than asphalt, has remained stationary for upward of twenty years, and the Government finds it impossible to activate it, on account of its obligation toward the company. Such a situation has become unbearable. The New York and Bermudez Company can not pretend that the exploitation of the natural products to which the contract relates was simply a right which it could renounce at its own will. A like interpretation would be absurd, because it would adjudge to one of the parties all the advantages and impose all the burdens on the other. It is well known that every right is the correlative of an obligation, and in the case in question the clauses of the contract show clearly that by the concessions which the Government made to the original contractor they purposed to obtain immediate benefits in return, such as were those of fostering the progress of the State of Bermudez by all the means which are developed by a great enterprise; of canalizing its rivers and adapting them to navigation, and, lastly, of receiving the duties which were expressly fixed for the exportation of natural products. The company rendered those objects nugatory by its proceedings; and it has ignored its obligations and made it impossible to continue the contract. Furthermore, the exploitation of the asphalt itself, the only natural product which the company exports, is carried on on so small a scale, as will be proved in the suit, that the profits which the Government derives therefrom are so insignificant as to be ludicrous.

On the other hand, the New York and Bermudez Company has not, in compliance with its obligation, canalized any of the rivers of the State of Bermudez, an improvement which was expressly agreed upon in the contract made with Mr. Horace R. Hamilton; and as in spite of the steps taken by the Government to obtain of the company the strict fulfillment of the contract, it has not been able to succeed in effecting an amicable arrangement, I have received precise instructions to sue, as I in fact do, with all legal formality, and relying on article 1137 of the civil code, the New York and Bermudez Company, an incorporated company, established in Philadelphia, and domiciled in this city, in the person of its representative, Mr. Robert Kemp Wright, adult and a resident, to the end that he consent to the dissolution of the contract made by the minister of fomento with Mr. Horace R. Hamilton on the 19th of October, 1883, approved by the National Congress on the 6th of June, 1884, and of which it is cessionaire; that it pay the nation for the damages which have been caused to the latter by the failure to execute the said contract, according to the just finding of appraisers, and calculated in accordance with the bases established by the first additional article; and that it also pay the expenses occasioned by these judicial proceedings. And as to the contract made with Mr. Horace R. Hamilton, it is a contract of lease, the subject-matter of which is the enjoyment of all the natural products existing on the wild lands of the former State of Bermudez; and from the instrument of proof and telegram which I annex it is clearly demonstrated that the lessee has omitted to make improvements which by the contract it is bound to make, such as the canalization of the rivers of said State. In conformity to the seventh particular of article 373 of the Code of Civil Pro-

cedure, I move for a decree of sequestration of the mine which the company exploits at the place called Guanoco, in the jurisdiction of the State of Bermudez, together with all the apparatus and appurtenances of the exploitation, to answer the results of this suit. In accordance with the said mentioned article I move that the person whom I shall in due time designate be appointed receiver. I consequently pray the citizen judge to admit the present action, substantiate it in accordance with law, and give a definitive judgment for the plaintiff, together with the costs, and to make the other legal orders. It is justice.

Caracas, twentieth of July, one thousand nine hundred and four

F. ARROYO PAREJO.

(This signature is over a stamp of 1 bolivar. There is a seal which says "United States of Venezuela, Office of the Attorney-General of the Nation.")

The subscriber, the secretary of the chamber of resolutions of the tribunal of the first instance of the federal and cassation court, certifies the correctness of the preceding copy.

Caracas, twenty-first of July, one thousand nine hundred and four.

JUVENAL ANZOLA.

(The signature "Juvenal Anzola" is written across two Venezuelan postage stamps of the value of 1 bolivar each.—TRANSLATOR.)

Federal and cassation court. Tribunal of first instance. Twenty-first of July, one thousand nine hundred and four. 94 and 46.

Mr. Robert Kemp Wright, resident of this city, representative of the New York and Bermudez Company, shall appear before this tribunal on the tenth court day at 9 o'clock in the morning, after having been cited, to answer this action. He shall give the porter a receipt for this copy.

J. Y. ARNAL.

(The preceding copy is engrossed on five sheets of Venezuelan sealed paper of the seventh class of the value of 1 bolivar each.—TRANSLATOR.)

[Inclosure to No. 309.—Translation.]

Citizen President of the Federal and Cassation Court in Your Character as Judge of First Instance:

I, Robert Kemp Wright, managing director in Venezuela of the "New York and Bermudez Company," before you respectfully show:

I have unexpectedly learned that there is an action in your court with reference to the contract made by the Government with Mr. Horace R. Hamilton, of which the company I represent is cessionaire, which action was instituted by the attorney-general of the nation in the latter's name, and he asks, furthermore, the sequestration of the mine or asphalt lake and its appurtenances which the company owns and exploits in the municipality of Union (Guariquen) in the district of Benitez, State of Bermudez; and I have learned—with surprise—that the said sequestration was decreed yesterday, Mr. Ambrose H. Carner being appointed receiver.

I say with surprise, because, although I have not yet read the decree for sequestration, the action and the petition for sequestration induce me to believe that the latter is based on No. 7 of article 373 of the code of civil procedure, and this being so, it can not be more contrary to law.

As a matter of fact, the plaintiff found himself obliged to pervert the nature of the contract in question, setting it forth purely and simply as a contract of lease; and he did this with the deliberate purpose of bringing the petition for sequestration within the scope of said No. 7, article 373, of the code of civil procedure. In order to understand this, it suffices to read the declaration and the contract; the latter has no characteristic whatsoever of a lease, and now that the pretension of the plaintiff is seen to be such, it will be of the utmost importance to the suit to elucidate this point.

It is absolutely necessary that the precautionary measure of sequestration in the case of a lease, when it is requisite, should be grounded on a contract that is undisputably a lease—that is to say, that it has been accepted by the parties as a lease. To suppose anything else would be to establish the possibility of anyone whomsoever bringing forth a contract of emphytousis, vivum vadium, sale, lean in kind on security,

etc., calling it a lease, and for him to obtain a sequestration, based on the capricious denomination which he has given to the said pact.

Article 368 of the said code of procedure says that the judge may grant the sequestration in the cases provided for by the law. That is to say, it lies within the discretion of the judge to grant it or not as should seem expedient to him, having regard to what is most equitable and rational, in deference to justice and impartiality (art. 18 of the said code). And, indeed, citizen judge, no one will fail to note the immense loss and damage that will be suffered by the company through the sequestration ordered, nor will any one of a serene mind think that the necessity for such a measure is justified even if it were in accordance with law, which is denied.

As there is no appeal from the order to which I refer and it is therefore revocable (art. 175, civil procedure), I pray you for the reasons stated to review and reverse the same as a matter of justice.

Caracas, July, one thousand nine hundred and four.

Signed over a stamp of 1 bolivar.

(Signed) ROBERT KEMP WRIGHT.

Received by the court July 22, 1904, 4.45 p. m.

J. Y. ARNAL.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, July 26, 1904.

Represented to Department that Venezuelan Government has brought suit against the New York and Bermudez Company, and has proceeded without any law authorizing it to dispossess company of asphalt lake. Advise Venezuelan Government that if facts are as represented the United States Government earnestly protests against such action. Advise Department in what court suit is brought, who is plaintiff, and communicate substance of complaint and of the orders and decree of court so far as given and the law statute or precedents, if any, upon which suit is based. Respectfully request Venezuelan Government to furnish this information. Say that if the Venezuelan Government would defer seizure of the company's property until the matter can be fully investigated by the Department, the United States Government would be pleased, and confidently hopes this may be done.

ADEE.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *July 30, 1904.*
(Received 8.30 p. m.)

I protested yesterday as instructed. Plaintiff is Venezuelan Nation. Complaint charges failure to canal rivers and exploit products other than asphalt, and asks for embargo and custodian. The court granted embargo and appointed as custodian Carner, who started for the lake on Venezuelan war vessel before complaint served on defendant. Statute authorizes embargo in case of lease; this is not lease but concession. Lake seized on 27th and Carner put in possession. So I can not ask Venezuelan Government to defer seizure. Copies complaint and company's protest will reach you August 2 and decree two weeks later. Answer to complaint must be

made August 2 and proofs furnished by company August 12. Haste made to avoid interference. Suits not yet brought against British railways.

BOWEN.

The Acting Secretary of State to Minister Bowen.

DEPARTMENT OF STATE,
Washington, August 1, 1904.

In view of your telegram of 30th ultimo, formally protest both orally and in writing against summary proceedings of Venezuelan Government dispossessing New York and Bermudez Company of its property without any hearing and directly in Government's interest, and notify Government of grave concern with which United States Government will regard any illegal action against American company.

LOOMIS.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *August 3, 1904.*
(Received August 4, 1904—12.50 p. m.)

I have protested orally and in writing, as instructed. Probably only effect will be to prevent Venezuelan Government from attacking other foreign corporations for the present. It has come to my knowledge that the object of the Venezuelan President is to recover from foreigners the amount must pay to them on their claims.

BOWEN.

The Acting Secretary of State to Minister Bowen.

No. 213.] DEPARTMENT OF STATE,
Washington, August 3, 1904.

SIR: I inclose copy of a letter from Messrs. Nicoll, Anable & Lindsay, requesting that instructions should be sent to you to confer with the counsel of the New York and Bermudez Company on the condition of its affairs.

The writers were advised that instructions were unnecessary and you would undoubtedly confer with the counsel when he should call on you.

I am, etc., ALVEY A. ADEE,
Acting Secretary.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *August 5, 1904.*
(Received 3.43 p. m., 6th.)

Manager Bermudez Company informed me to-night his superintendent, American citizen, is held prisoner at the lake and closely

guarded by Venezuelan soldiers. I shall protest to-morrow morning and request immediate release, stating I do so while awaiting instructions.

BOWEN.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *August 6, 1904.*
(Received 3.47 p. m.)

Later news of superintendent announces his release.

BOWEN.

Mr. Bowen to Mr. Hay.

No. 310, Confidential.] AMERICAN LEGATION,
Caracas, Venezuela, August 7, 1904.

SIR: I have the honor to inclose herewith copies of the cablegrams that have passed between Washington and this legation since the last mail, copies of the law papers handed to me by the manager of the asphalt company, and copies of my correspondence with the foreign office here in regard to the controversy in which the said company is engaged with the Venezuelan Government.

The manager of the company has informed me that the asphalt lake was seized by Carner and about 100 Venezuelan soldiers; that the company's safe was blown open; that the American superintendent at the lake was made a prisoner, but was finally released; that two Venezuelan gunboats are at hand to prevent the lake from being retaken; that the company's British workmen are forced at the point of the bayonet to remain at the lake and to work, and that Carner has engaged a ship to carry asphalt to the rivals of the company in the United States.

President Castro has now reached a point where he will only yield to force. * * * Three days ago he told a friend of mine that within six months he will dispossess the French Cable Company of its property here, and that he will make the foreigners resident in Venezuela pay all the money he needs to satisfy the awards of the Commissions that recently sat here. * * * The prevailing opinion in the corps is that the Government of the United States will be called upon, after the November elections, to make President Castro fulfill his obligations to foreigners and to conduct his Government on civilized principles. I have endeavored in my correspondence with his foreign office to leave our controversy with him where it may be resumed easily whenever you desire.

I am, etc.,

HERBERT W. BOWEN.

[Inclosure to No. 310—Cablegram received 12 m., July 29, 1904.]

Mr. Adee to Mr. Bowen.

Advise Venezuelan Government that if facts are as represented the United States earnestly protests. More to-morrow.

ADEE.

[Inclosure to No. 310.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION,
Caracas, Venezuela, July 29, 1904.

MR. MINISTER: If it is true that the Venezuelan Government demanded 50,000,000 bolivars of the New York and Bermudez Company; that, when payment of that sum was refused by the said company, the Venezuelan Government induced, by ex parte proceedings, the federal court and court of cassation to place an embargo on the property of the said company, and that a custodian has been appointed and sent to take possession of the said property of the said company, I hereby, in conformity to instructions I have just received from Washington, have the honor to inform you that the Government of the United States of America earnestly protests against all said actions and proceedings.

I gladly, etc., BOWEN.

[Inclosure to No. 310—Cablegram received July 29, 1904.]

Mr. Adee to Mr. Bowen.

Represented to Department that Venezuelan Government has brought suit against New York and Bermudez Company and has proceeded without any law authorizing it to dispossess company of asphalt lake. Advise Venezuelan Government that if facts are as represented the United States Government earnestly protests against such action. Advise Department, in case suit is brought, who is plaintiff, and communicate substance of complaint and of the orders and decree of the court so far as given and the law statute upon which suit, if any, is based. Request Venezuelan Government to furnish this information. Say that if the Venezuelan Government would defer seizure of the company's property until the matter shall have been fully investigated by the Department the United States Government would be pleased and confidently hopes this will be done.

ADEE.

[Inclosure to No. 310—Cablegram.]

Mr. Bowen to Secretary of State.

JULY 30, 1904—8 a. m.

I protested yesterday as instructed. Plaintiff is Venezuela nation. Complaint charges failure to canalize rivers, and exploit products other than asphalt, and asks for embargo and custodian. The court granted embargo and appointed as custodian Carner, who started for the lake on Venezuela war vessel before complaint was served on the defendant. Statute authorizes embargo in case of lease. This is not lease, but a concession. Lake was seized on the 27th, and Carner was put in possession, so I can not ask the Venezuelan Government to defer seizure. Copies complaint and company's protests will reach you August 2 and decree two weeks later. Answer to complaint must be made August 2, and proofs furnished by company August 12. Haste made to avoid interference. Suits not yet brought against British railways.

BOWEN.

[Inclosure to No. 310—Cablegram.]

Mr. Bowen to Secretary of State.

JULY 30, 1904.

French minister tells me he is instructed not to communicate with Venezuelan Government, as Venezuelan Government proposed France should fix the amount to be paid on old claims, and that French Cable Company here should be made to pay that amount. All the other European legations, especially Great Britain, angry with Venezuelan Government.

BOWEN.

[Inclosure to No. 310—Cablegram received August 2, 1904, 3 p. m.]

Mr. Loomis to Mr. Bowen.

In view of your telegram of the 30th ultimo, formally protest both orally and in writing against summary proceedings of Venezuelan Government in dispossessing New York and Bermudez Company of its property without any hearing and directly in Government's interest, and notify Government of grave concern with which United States Government will regard any illegal action against American company.

LOOMIS.

[Inclosure to No. 310.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION,
Caracas, Venezuela, August 3, 1904.

Mr. MINISTER. In conformity to the instructions which I communicated orally to your excellency yesterday afternoon, I now have the honor to protest formally and in writing against the summary proceedings of the Venezuelan Government in dispossessing, directly in its own interests, the New York and Bermudez Company of its property without giving to the said company any hearing whatsoever, and to inform you that the Government of the United States of America will regard with grave concern any illegal attempt to deprive the said company of its property and rights.

I gladly, etc.,

HERBERT W. BOWEN.

[Inclosure to No. 310—Cablegram.]

Mr. Bowen to Secretary of State.

AUGUST 3, 1904.

I have protested orally and in writing as instructed. Probably only effect will be to prevent the Venezuelan Government from attacking other foreign corporations for the present. It has come to my knowledge that the object of the Venezuelan President is to recover from foreigners the amount he must pay to them on their claims.

BOWEN

[Inclosure to No. 310—Translation.]

Mr. Sanabria to Mr. Bowen.

CARACAS, *August 2, 1904.*

Mr. MINISTER: With due attention the Federal Executive has considered your excellency's note, dated July 29 last, in regard to a legal matter in which the New York and Bermudez Company is interested.

As the protest which your excellency makes in the note in question is founded on facts of a hypothetical nature, and presents as conclusions premises which are of the same character, the Government, in reply, can not attribute to it any foundation except that which is set forth in the communication which your excellency has been pleased to send to me.

If, on the one hand, it has been a matter of surprise, in view of the cordial relations existing between the two nations, that on the present occasion a previous explanation was not given, the Venezuelan Government, on the other hand, could not but be surprised that to a sphere so foreign as that of diplomacy a matter could be carried that is within the exclusive jurisdiction of competent courts, in which, it is fundamentally permissible to state, the interested parties have the most complete liberty of causing to be enforced whatever means of defense the municipal law of this nation sanctions.

I gladly, etc.,

GUSTAVO J. SANABRIA.

[Inclosure to No. 310.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION,
Caracas, Venezuela, August 3, 1904.

MR. MINISTER: In answer to your excellency's note of yesterday's date, which was brought to this legation late this afternoon, I have the honor to confirm your assertion that the protest I sent to your excellency on the 29th of July last was hypothetical in nature. Doubtless it was made so because the news of the summary action of the Venezuelan Government in dispossessing the New York and Bermudez Company seemed incredible to my Government, and also because it was believed that, even if the report were true, a hypothetical protest would induce the Government of Venezuela to make a plain and frank declaration of its willingness to annul the decree of dispossession, or to grant a hearing to the New York and Bermudez Company before enforcing the decree. By pursuing that course the Venezuelan Government would have given to the Government at Washington pleasing proof of the significance which it attaches to the phrase "cordial relations," courteously employed in your excellency's note.

As no such declaration as that was made by the Government of Venezuela within the time an answer was expected, the American Government instructed me to send to your excellency a formal protest, and I did so this morning.

The proceedings dispossessing the American company of its property, having been ex parte, constitute a distinct denial of justice, and, consequently, the Government of the United States of America may very properly take such steps as may be requisite to afford the American company whatever protection it should have.

I gladly, etc.,

HERBERT W. BOWEN.

[Inclosure to No. 310—Cablegram.]

Mr. Bowen to Secretary of State.

AUGUST 5, 1904—6 p. m.

Manager Bermudez company informed me to-night his superintendent, American citizen, is held prisoner at the lake and closely guarded by Venezuelan soldiers. I shall protest to-morrow, and request immediate release, stating I do so while awaiting instructions.

BOWEN.

[Inclosure with No. 310—Cablegram.]

Mr. Bowen to Secretary of State.

AUGUST 5, 1904—7.30 p. m.

Later news of superintendent announces his release.

BOWEN.

[Inclosure to No. 310—Translation.]

Mr. Sanabria to Mr. Bowen.

CARACAS, *August 6, 1904.*

MR. MINISTER: The note of the 3d instant has been received in this office, in which your excellency undertakes to protest against the summary proceedings to which in your opinion the New York and Bermudez Company has been subjected by the Government of Venezuela, with the object of dispossessing it of its property without giving a hearing to the said company.

I avail myself of this opportunity to inform your excellency that the views which you express in said note can not be accepted by the Venezuelan Government, inasmuch as what happened in the case instituted against the said company is altogether consonant with the rules of procedure perfectly well known and applied with absolute rectitude by the court which was called upon to take cognizance of the matter.

I renew, etc.,

GUSTAVO J. SANABRIA.

[Inclosure to No. 310—Translation.]

Mr. Sanabria to Mr. Bowen.

CARACAS, *August 6, 1904.*

MR. MINISTER: I have seen in your excellency's note of the 3d instant that the American legation is not yet in possession of the information needed to duly understand the suit begun by the Venezuelan Government against the New York and Bermudez Company.

Indeed, your excellency speaks in it of a summary proceeding instituted against the company in reference to, and the dispossessing of certain property belonging to it. That is not the case.

In conformity to article 1137 of the civil code, the attorney-general of the nation, in its name, has requested the federal and cassation court to render a decision on the contract made between the Government of the Republic and Mr. H. R. Hamilton, of which contract the said company is the cessionaire.

The reasons alleged as the bases of the action are expressed with perfect clearness in the libel, which was published in the local newspaper, which I have the honor to send you herewith.

The term dispossession, which your excellency applies to the decree of sequestration of an asphalt mine, of which alone the company is in possession, can not possibly be accepted, because said measure is perfectly consonant with our civil code, which in turn is in harmony with the most advanced principles of universal legislation. The measure is provided for in title 3, section 1, book 2 of the code of civil procedure, is of a precautionary and transitory nature, and, when it is put into execution, the law orders that a hearing be opened during which it is permitted to the party whose interests are adversely affected to justify his opposition and to obtain an annulment. Moreover, even in case the provisional decision be confirmed, not even then can it be claimed that there has been a dispossession, inasmuch as it does not establish irrevocable rights, which only an executed judgment can establish.

The procedure being prescribed by law, and having to be observed in these cases, it is not in the power of the President to annul the decree, based on the petition of the representative of the State, nor to make any declaration which might embarrass the free action of the courts, in view of the fact that to them alone is assigned the duty of deciding any petition which in respect to the question at issue the New York and Bermudez Company might make.

I deem it apposite also to observe that the New York and Bermudez Company could have prevented the execution of sequestration by making use of the relief accorded by article 369 of the code of civil procedure.[a]

From what I have herein set forth it is evident that notice to the company was not necessary in order that the sequestration should be instituted and concluded legally, and consequently the proceedings can not be denominated ex parte. Therefore, as the court has not refused to hear the defendant, and did not depart in the least from the rules of procedure which the law prescribes, it is not possible to speak of a denial of justice; and, inasmuch as the case in question has clearly defined bounds within which it should be discussed, the attention of the Federal Executive has been called to the final part of the note I am answering, in which mention is made of the measures which the Government of the United States might take to offer to the American company whatever protection it should have.

As such declarations are not acceptable, as they not only derogate from the good name of the State, but involve a menace directed against its sovereignty and independence, I feel obliged to protest against them in the most formal manner.

As to the surprise which through me the Executive expressed in my note of the 2d instant, I am sure that the explanations which I am pleased to have set forth in this note will justify in your excellency's mind the impression which the contents of the protest of the 29th of this last month caused him.

I gladly, etc., GUSTAVO J. SANABRIA.

[Inclosure to No. 310.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION,
Caracas, Venezuela, August 7, 1904.

MR. MINISTER: Your excellency's note of the 6th instant, containing a clear exposition of the law of Venezuela applicable to the controversy in regard to the property of

[a] To have obtained the relief afforded by this article the company would have had *to deposit with the* court 50,000,000 bolivars, or about $10,000,000.

the New York and Bermudez Company, unfortunately does not change the main fact in the case, and that is that the property of the company is no longer in its possession, but is in that of Venezuelan soldiers and of a custodian appointed by the Venezuelan Government by virtue of a decree obtained, as your excellency states, by the attorney-general of Venezuela from a court that did not grant the company a hearing before issuing the decree, the object of which was to transfer the possession of the property from the company to the Venezuelan Government. The question as to whether or not the Venezuelan Government intends to retain permanent possession of the property does not alter the fact that the company was dispossessed of its property without a hearing, and distinctly in the interest of the Venezuelan Government.

Such being the case, my Government could not refrain from concluding that there had been a denial of justice to the American company, that proper protection should be given to it, and that an earnest protest should be made to the Venezuelan Government.

As your excellency's note upholds views quite contrary to those I have expressed, I shall send it, together with your excellency's answer to the protest, by to-night's post to Washington, where I am sure they will receive the attention they merit.

I gladly, etc.,

HERBERT W. BOWEN.

Citizen president of the federal and cassation court,
in your character as judge of first instance:

I, Robert Kemp Wright, managing director in Venezuela of the New York and Bermudez Company, before you very respectfully show:

I have unexpectedly learned that there is an action in your court with reference to the contract made by the Government with Mr. Horace R. Hamilton, of which the company I represent is cessionaire, which action was instituted by the attorney-general of the nation in the latter's name, and he asks furthermore the sequestration of the mine or asphalt lake and its appurtenances which the company owns and exploits in the municipality of Union (Guariquen), in the district of Benitez, State of Bermudez; and I have learned, with surprise, that the said sequestration was decreed yesterday, Mr. Ambrose H. Carner being appointed receiver.

I say with surprise, because, although I have not yet read the decree for sequestration, the action and the petition for sequestration induce me to believe that the latter is based on No. 7 of article 373 of the code of civil procedure, and, this being so, it can not be more contrary to law.

As a matter of fact, the plaintiff found himself obliged to pervert the nature of the contract in question, setting it forth purely and simply as a contract of lease, and he did this with the deliberate purpose of bringing the petition for sequestration within the scope of said No. 7, article 373 of the code of civil procedure. In order to understand this, it suffices to read the declaration and the contract; the latter has no characteristic whatsoever of a lease, and now that the pretension of the plaintiff is seen to be such it will be of the utmost importance to the suit to elucidate this point.

It is absolutely necessary that the precautionary measure of sequestration in the case of a lease, when it is requisite, should be grounded on a contract that is undisputably a lease—that is to say, that it has been accepted by the parties as a lease. To suppose anything else would be to establish the possibility of anyone whomsoever bringing forward a contract of emphyteusis, vivum vadium, sale, loan in kind on security, etc., calling it a lease, and for him to obtain a sequestration, based on the capricious denomination which he has given to the said pact.

Article 368 of the said code of procedure says that the judge may grant the sequestration in the cases provided for by the law. That is to say, it lies within the discretion of the judge to grant it or not as should seem expedient to him, having regard to what is most equitable and rational, in deference to justice and impartiality (article 18 of the said code). And indeed, Citizen Judge, no one will fail to note the immense loss and damage that will be suffered by the company through the sequestration ordered, nor will anyone of a serene mind think that the necessity for such a measure is justified, even if it were in accordance with law, which is denied.

As there is no appeal from the order to which I refer and it is therefore revocable (article 175 civil procedure), I pray you for the reasons stated to review and reverse the same as a matter of justice.

Caracas, July 1, 1904.

ROBERT KEMP WRIGHT.

Signed over a stamp of 1 bolivar.
Received by the court July 22, 1904, 4.45 p. m.

J. Y. ARNAL.

[Inclosure to No. 310.]

Citizen President of the Federal and Cassation Court as Judge of First Instance:

I, Robert K. Wright, of full age, citizen of the United States of North America, residing in this capital, as managing director in Venezuela of the New York and Bermudez Company, in the name thereof, before you, with the utmost respect, show:

I contradict, in all its parts and in the most decided and absolute manner, the action instituted by the citizen attorney-general of the nation in the name of the latter against the company which I represent; and I contradict it both with respect to the facts set forth in the declaration, the greater part of which are not true, and with respect to the right which is professed to be deduced therefrom.

I base my contradiction on the following grounds:

First. The contract to which the action refers, made by the National Executive of Venezuela, through the channel of the citizen minister of fomento, with Mr. Horace R. Hamilton, approved by the National Congress on the 6th of June, 1884, is not a contract of lease, as the plaintiff pretends, impelled thereto by his purpose of obtaining the sequestration for which he prayed in the final part of his declaration and to which case 7, aritcle 373, of the code of civil procedure is confined. Neither did the contracting parties ever intend to make a lease when they executed that contract nor has either of the contracting parties considered or held it to be a lease, nor can the stipulations of the said compact be adapted to the rules and consequences of a lease, either in form or in matter.

Second. On carefully considering the said contract, in the hypothesis that the omissions were true which the plaintiff attributes to the New York and Bermudez Company, as the concessionaire—which it is—of Hamilton, it is seen without difficulty and beyond the shadow of a doubt, that the rights granted to Hamilton (rights which the plaintiff desires to convert into obligations) are all, except that of exploration, not only discretionary and consequently may be renounced by him and those claiming under him, but it is also doubtful and hypothetical, they being conditional, whether any of them, except exploration, can be exercised; and this is due to the very nature of things, for neither of the two contracting parties could affirm, at the moment of making the contract, that Hamilton would find exploitable natural products, and much less that on finding them it would be convenient or advantageous to him to exploit them.

Third. The argument of the plaintiff, who says this interpretation is absurd and affirms that it adjudges all the advantages to one of the parties and imposes all the burdens on the other, has no value against what has been said; and it has no value for three principal reasons: (1) Because that is not an interpretation, but the clear and simple expression of the clauses of the contract which prove it of themselves; (2) because the plaintiff forms his opinion not from the moment of making the contract, as is obligatory, when the results thereof were perfectly uncertain for both of them, but from the present moment when the other party to the contract has, by his labor, derived advantages which were unknown before, the ownership of which is now being unjustly disputed with him, and (3) because it would not be the only instance of analogous concessions made by the nation.

Fourth. The assertion that all the advantages would be to one party and to the other all the burdens would prove to be no truer in any case; but even if this were so—which has been denied—it is no reason for considering that the perfect juridical claim created by that compact has been vitiated by this circumstance. If one of the contracting parties derives greater profits from the transaction than the other, he owes it without doubt to his greater foresight and diligence when making the contract, to the greater extent of his labor and sacrifices in managing and exploiting the business, and to a situation which has been favored by that uncertainty to which the parties were subject when contracting; surely not one of these reasons and causes for advantage can prove to be censurable even under the severest criticism.

Fifth. Firstly, Hamilton, from whom the company derives, and afterwards the company, have most carefully and perfectly executed not only the principal obligations entered into in that contract, but each and every one of them, in strict compliance with articles 1077 and 1111 of the civil code in force at the date of the contract (concordant with 1104 and 1138 of the present code). That perfect execution of all its obligations is fully proved by the express official declaration of the Federal Executive power of Venezuela, as is seen principally in the resolution issued through the honorable channel of the ministry of fomento, department of territorial wealth, on the 23d day of July, 1900, relative to the use which the company could make of its rights acquired under the contract in question and to the company's rights of preference in the denunciations of mines and wild lands; as is also seen from the certificate issued on the same date by the citizen minister of fomento on the petition of the company represented by Mr. A. H. Carner (now receiver in the sequestration), which resolution and certificate were published in the Official Gazette No. 7986 of Wednesday, the 25th

of July, 1900; as is also seen from many other official documents which will be duly produced, and as appears from the facts that have taken place.

Sixth. In the hypothesis set up by the plaintiff and obligations left unexecuted by the company are those of canalizing one or more rivers and exploiting woods, resins, plants, and aromatic seeds and other natural products except the asphalt, which he affirms has been exploited; but as even in that hypothesis it is found that those works and exploitation, according to the contract, are not subject to any term for their commencement within the period of the said contract, and as from their nature those works and exploitations require time for their execution, they can not be considered obligations that are due and the execution of which is demandable, until after the judicial authority should have fixed a term for them and that term should have elapsed (article 1118 of the civil code then in force concordant with 1145 of the present code), this being a reason which of itself suffices for dismissing the action which has been instituted.

Seventh. But with respect to those very works and exploitations the plaintiff considers the company to have omitted them, no doubt because finding them without a time limit he thought their performance demandable immediately after the signing of the contract (article 1118 of the civil code then in force concordant with 1145 of the present code); but as all those suppositious obligations would be personal, engendering personal actions, and the plaintiff says that twenty-one years have transpired since they accrued, the company formally pleads the limitation enacted by article 1909 of the civil code then in force and by article 1964 of the present civil code.

Eighth. The suppositious obligation to canalize one or more rivers, on which attention has been fixed, as it is the only pretext for the sequestration which has been decreed, never existed legally either for Hamilton or for the company; if it had existed it would be found that it was an alternative obligation to canalize one or more rivers or to construct a railroad, and that it was executed by the construction of the railroad that the company made and which has existed there for many years and is to-day under the decreed sequestration (articles 1122 and 1123 of the civil code then in force agreeing with 1149 and 1150 of the present code); but even supposing that it had existed as a simple obligation, it would be found that it had been executed as far as possible, and beyond that no obligation is conceived to extend.

Ninth. On the other hand the company most solemnly states that the asphalt lake and lands and other appurtenances which it holds in Guanaco, municipality of Union (Quariquen), district of Bonitez, in the State of Bermudez, and which have been sequestrated, do not belong to it by virtue of the so-called Hamilton contract, which is the subject-matter of this suit, but by virtue of the titles which were legally granted to it by the National Executive power of Venezuela on the 7th and 14th of December, 1888, both protocolized in the subaltern registration office of the district of Bonitez (El Pilar) on the 11th day of December, 1890, the first protocol of the fourth quarter of that year, on folios 100, 101, and 102, under Nos. 61 and 62; and although it is true that the remote occasion of those titles was the contract now under discussion, it is not less true that they also have their immediate juridical causes which are proper and peculiar to them; these being titles which have never been discussed and are not susceptible of discussion in the present suit.

Tenth. Furthermore, the implicit rescissory condition to which the action that has been instituted is confined and to which article 1137 of the civil code which has been cited refers has not such extensive effects as the plaintiff wishes to attribute to it in this case; the choice between the dissolution and the execution of a contract and the consequences of one action or another are not always subject to the free will of the moving party; and the company maintains, even in the supposition that all the facts alleged were true—which they are not—that the cause of action contained in the declaration of the action is contrary to law.

Eleventh. The plaintiff says that the Government on making the concessions of the contract proposed "to foster the progress of the State of Bermudez by all the means which are developed by a great enterprise;" and that the exploitation of the natural products of the State of Bermudez, other than asphalt, has remained stationary for upward of twenty years, and the Government finds it impossible to activate it on account of its obligations toward the company." To demonstrate the groundlessness of these assertions it suffices to observe with respect to the first: that neither Mr. Hamilton, when he made the contract, nor the company, when the Government accepted it as cessionaire of the contract, in 1884, counted on enormous capital, and far less could they furnish nourishment to illusions and purposes which are now said to have vanished; and with respect to the second: that the expression "natural products and other than asphalt" is so vague and extensive that by saying too much it says nothing, and that if some natural products can be determined, it is precisely by studying the infinity of mining concessions, sales of wild lands, and contracts of

every kind which both the Federal Executive power and the local governments and authorities have been most liberally making for the State of Bermudez and its sections, since the 15th of September, 1883, until now, as can be seen in the collections of their respective official gazettes, registration offices, and public archives.

The company for its guaranty and indemnity cites Mr. Horace R. Hamilton, now residing at Habana, Republic of Cuba, as grantee of the contract, the subject-matter of this suit. And as he is recognized as grantee in the declaration of the action, I pray that the course of the suit may be suspended in conformity to article 281 of the code of civil procedure.

And whereas the directorate and general office of the New York and Bermudez Company is situated in the city of Philadelphia, United States of North America, which is also set out in the action, and the company needs to put forward in the suit documents which are in that office, I now ask for the extraordinary term for putting in evidence, in conformity to article 284 of the code of civil procedure.

For all the reasons stated, I pray that the action be dismissed, and the company expressly reserves its rights of action for the enormous loss and damage which it has suffered and continues to suffer through the illegal sequestration that has been decreed in the present suit of its asphalt lake and all its dependencies. I likewise pray that the plaintiff may be ordered to pay the costs. It is justice, etc.

Caracas, August, 1904.

ROBERT K. WRIGHT.

[Inclosure to No. 310.]

Citizen president of the federal and cassation court as judge of first instance.

I, Robert K. Wright, managing director in Venezuela of the New York and Bermudez Company, acting in the name of the latter, object in the most formal and decided manner to the sequestration asked for by the citizen attorney-general of the nation and decreed by the tribunal, without any notice whatsoever being given to the company, on the 21st day of July last, and I deny absolutely and entirely both the facts and the law adduced for the purpose of grounding the said sequestration.

I base my objection on the following reasons:

1st. The entire contents of my writing presented to this tribunal on the 22d day of July last past, which contents I reproduce in their entirety and ask that the same be read and taken as a part of this answer.

2d. Even in the case—which is denied—that the contract to which the action relates could be held to be a lease, the testimonial proof and the telegram put forward are not sufficient legal proof to give to the facts and omissions alleged a character of certaintv

3d. Even in the case—which is denied—that the said contract could be held to be a lease and that the facts and omissions alleged to ground the sequestration were legally proved, I reproduce in their entirety Nos. 8 and 9 of the answer to the action, which are as follows: "8th. The supposititious obligation to canalize one or more rivers, on which attention has been specially fixed, as it is the only pretext for the sequestration which has been decreed, never existed legally either for Hamilton or for the company; if it had existed, it would be found that it was an alternative obligation to canalize one or more rivers or to construct a railroad, and that it was executed by the construction of the railroad that the company made and which has existed there for many years and is to-day under the decreed sequestration articles 1122 and 1123 of the civil code then in force agreeing with 1149 and 1150 of the present code; but even supposing that it had existed as a simple obligation, it would be found that it had been executed as far as possible, and beyond that no obligation is conceived to extend. 9th. On the other hand the company most solemnly states that the asphalt lake and lands and other appurtenances which it holds in Guanoco, municipality Union (Guariquen), district Benitez, in the State of Bermudez, and which have been sequestrated, do not belong to it by virtue of the so-called Hamilton contract, which is the subject-matter of this suit, but by virtue of the titles which were legally granted to it by the national executive power of Venezuela on the 7th and 14th of December, 1888, both protocolized in the subaltern registration office of the district Benitez (El Pilar) on the 11th of December, 1890, the first protocol of the first quarter of that year, on folios 100, 101, and 102, under Nos. 61 and 62; and although it is true that the remote occasion of those titles was the contract now under discussion, it is not less true that they have also their immediate juridical causes which are proper and peculiar to them, these being titles which have never been discussed and are not susceptible of discussion in the present suit."

The company can not leave without protest the fact that Mr. A. H. Carner, who is a notorious enemy of the company and hostile to its interests, has been appointed receiver.

For the reasons stated I pray that the decree of sequestration may be revoked, as justice demands, and I expressly reserve to the company its rights of action for the enormous loss and damage which it has been suffering or may be made to suffer through the said sequestration.

Caracas, August, 1904.

ROBERT K. WRIGHT.

[Inclosure to No. 310.]

Federal and cassation court, tribunal of first instance, Caracas, July 21, 1904.

In the declaration of his action the citizen attorney-general of the nation, grounding his application on the depositions of the witnesses Drs. Thomas C. Llamozas, German Jiminez, and Manuel A. Ponce, requested, in conformity to article 373 of the code of civil procedure, the sequestration of the mine which the defendant company exploits at a place called Guanoco, together with all the apparatus and accessories used in the exploitation, and the sequestration asked for is granted as the tribunal finds that the extreme circumstances required by the law have been fully proved; and consequently the judge of first instance in civil matters, of the section of Cumana in the State of Bermudez is hereby commissioned to execute the same, and the proper dispatch shall be issued to him with the corresponding insertions. Mr. Ambrose H. Carner, at the indication of the citizen attorney-general of the nation, is for the purpose in question named receiver of the said mine and of all the apparatus and accessories of the exploitation, by an order of like date herewith. Let Mr. Carner be cited to the end that in case he accept, he should take the oath required by law. Let a separate volume be made of the proceedings for the sequestration. J. Y. Arnal. Juvenal Anzola, Secretary.

To-day the 21st of July of the present year 1904 the marshal, Manuel Leon, returned the writ of citation of Mr. A. H. Carner, signed by the said gentleman, it is added to these proceedings. Juvenal Anzola.

At the sitting held this 22d day of July of the present year 1904, at 9 a. m., appeared Mr. A. H. Carner, who had been appointed receiver of the mines that the defendant company exploits in Guanoco, together with all the apparatus and accessories of the exploitation, and having been informed of the appointment and the relevant part of the proceedings relating to the charge of receiver having been read, he stated that he accepted and swore to faithfully discharge the duties of the said office. It was read and, on being found to be in order, they sign. J. Y. Arnal. A. H. Carner. Juvenal Anzola, Secretary.

On the same date was issued and transmitted the dispatch ordered at the proceedings of the 21st day of the current month for the judge of first instance in civil matters, of the section Cumana, in the State of Bermudez. Juvenal Anzola, Secretary.

[Telegram.]

CUMANA, *April 22, 1904—11 a. m.*

DR. LUCIO BALDO: Private and urgent. I inform you on trustworthy data that the New York and Bermudez Company has not canalized any river or channel adjacent to Guanoco. Nor has it exploited or exported any other natural product than asphalt. I thus answer your telegram dated 13th instant. G. and F.

R. VALESQUEZ.

Citizen parish judge of the Department Libertador.

I, F. Arroyo Parejo, attorney-general of the nation, acting in this character, before you, with customary consideration, show:

For purposes which subserve rights I represent I pray you to examine, after the formalities required by law, the witnesses whom I shall bring forward, they being of full age and residents, on the following particulars:

First. If they have been in the State of Bermudez and know the exploitation which the New York and Bermudez Company has at that place called Guanoco.

Second. If they know and it is within their certain knowledge that the aforesaid company has not canalized any of the rivers of the State of Bermudez, principally the channel of Guarapiche as far as Naturin.

Third. The witnesses must state the reasons for their statements.

Which being done. I pray you to return me the original proceedings. It is grace. Caracas, 14th of June. 1904. F. Arroyo Parejo.

Parish court. Caracas. 14th of June. 1904. Let the testimony be taken and the proceedings returned. Andres A. Albor. Juan C. Hurtado, secretary.

At the same sitting there appeared a witness who, being sworn, said that his name was Tomas C. Llamozas; that he was of full age, a married man, an engineer, of this neighborhood, and competent to depose according to the law, with which he was made acquainted. The preceding writing was read to him, and on being questioned on the particulars therein contained he said, to the first: "Yes, that appears officially;" to the second, "From Guanoco, where the asphalt mine the New York and Bermudez Company exploits is situated, to the port of Maturin, the crossing is effected by means of bongos or canoes, which is more or less the vessel of the company used for the dispatch of its business with that custom-house, and this was so because vessels of deeper draft could not do it, which evidently proves, as I see it, that that route by the said river Guarapiche is not canalized. Nor has any scientific canalization been done to any of those that I know in that region;" and to the third, "It is already answered." The testimony terminated, it was read, and being found to be correct he signs. Andres A. Albor. Tomas C. Llamozas. Juan C. Hurtado, secretary.

Immediately thereafter appeared a witness who, on being sworn, said his name was German Jimenez; that he was of full age, a married man, an engineer, of this neighborhood, and competent to depose according to the law, with which he was made acquainted. Interrogated regarding the particulars of the foregoing writing, which was read to him, he said to the first: "Yes; in October, 1900, I was at the asphalt mines which the New York and Bermudez Company exploits at Guanoco;" to the second, "In the channels that I visited, which are those that lead to the asphalt mine named, I saw no work of canalization. With respect to the Guarapiche channel I can not affirm anything, because I have never been on it;" and to the third, "What I have deposed I know, because I have seen it personally." The testimony terminated, it was read, and being found correct he signs. Andres A. Albor. G. Jimenez. Juan C. Hurtado, secretary.

It is returned on two folios. Hurtado.

Citizen parish judge. I, F. Arroyo Parejo, attorney-general of the nation, acting in that character, before you show:

For the purposes which subserve rights I represent I pray you to examine, after oath and other formalities required by law, the witness whom I shall put forward regarding the following particulars:

Is it true that he has been at the place called "Guanoco," jurisdiction of the State of Bermudez, where the New York and Bermudez Company exploits an asphalt deposit? Second. If he knows, and it is within his knowledge, that the aforenamed company has not canalized the river Guarapiche, principally in its extent from Caño Colorado to Maturin? Which being done I pray that the original proceedings be returned to me. It is grace.

Caracas, 16th of June, 1904.

F. ARROYO PAREJO.

Parish court, Caracas, 16th of June, 1904. 93d and 46th.

Received. Let the testimony be taken and the proceedings returned. Andres A. Albor. Juan C. Hurtado, Secretary.

On the same date appeared a witness who, having been sworn, said that he was called Dr. Manuel Antonio Ponce, that he was of full age, a married man, a lawyer, of this domicile, and competent to depose according to law, which, through his profession, he knows. The foregoing writing was read to him and interrogated on the particulars which it contains. He said to the first: "I have been at Guanoco on different occasions as lawyer of the New York and Bermudez Company in the suit in which it was engaged with Messrs. Warner and Quinlan regarding possession of the mine 'Felicidad,' and on those different occasions I remained at the mines sometimes days and other times as long as two or three months;" and to the second: "As the greater number of times I went to Guanoco I made the voyage in the company's steamer going from Trinidad to the channels I can affirm that that navigation is performed owing to their natural width and depth, and in some, principally that which gives admission to the company's wharf, by favor of the tide. I can especially say that from a certain point of Caño Colorado the steamship can not continue the journey to the said port, so that for it to be dispatched at the custom-house it is obliged to anchor at this point and dispatch an employee in a boat, which takes five to six hours to go and return.

With regard to the river Guarapiche there is no doubt that it is not canalized either for the said river from the port of Caño Colorado, which is almost at its mouth up to Maturin is navigated in lighters by means of poles." The testimony terminated, it was read, and being found to be correct he signs. Andres A. Albor. Manuel A. Ponce. The secretary, Juan C. Hurtado.

It is returned. Hurtado.

[Inclosure to No. 310.]

CODE OF CIVIL PROCEDURE.

ART. 281. In cases of indemnity and guaranty, as well as the plaintiff as the defendant, may ask at the moment of answering for the citation of the person liable to indemnify or guaranty, and the judge shall order the same to be done immediately; but the course of the cause shall not be suspended except when there is authentic proof either directly of the obligation to indemnify or guarantee, or of the act from which such obligation arises as of right.

ART. 284. The party who requests that an extraordinary term be granted him for the taking of evidence in places which are situated at more than 2,000 kilometers from that at which the suit is being carried on, shall necessarily make his request at the moment of answering the action, and put forward the proofs or securities on which the petition is based. The opposite party shall state whether he objects or not to the granting of the request and the tribunal shall restrict itself to declaring that the petition has been duly made and shall make the necessary order after taking of the evidence in conformity to the provisions on the matter.

ART. 368. At any stage or epoch of the cause whatsoever, if there is proof of the right sued for, although it be the deposition of witnesses, when this proof is admissible according to the civil code, any of the parties may request, according to the case, and the judge may grant:

1. Prohibition to alienate the subject-matter of the dispute.
2. The sequestration of determinate properties.
3. Deposit of security, and in default thereof the attachment of sufficient property.

ART. 369. None of the measures stated in the three preceding numbers shall be ordered, or shall be executed if they were ordered, if the party against whom they have been requested or decreed give sufficient security or guaranty.

If the other party should object to the efficacy or sufficiency of the guaranty the tribunal shall decide on the proofs put forward at the first hearing.

ART. 370. It shall be sufficient for those who sue in forma pauperis to take the oath cautio judicatum solvi.

ART. 373. Sequestration shall be decreed:

1. Of the chattel, the subject-matter of the action when the defendant has no responsible property and it is with reason feared that he may conceal, alienate, or deteriorate it.
2. Of the subject-matter of the dispute when its possession is doubtful.
3. Of the wife's property and in default thereof of that of the conjugal partnership or of the husband, sufficient to cover the former when the husband wastes the wife's property.
4. Of sufficient property of the inheritance, or, in default thereof, of the defendant, when he who has been deprived of his lawful property reclaims it from those who take or hold his inherited estate.
5. Of the real property which the defendant purchased and is enjoying without paying the purchase money.
6. Of the subject-matter in dispute when, definite judgment having been given against the holder thereof, the latter appeals without giving security to answer for the said subject-matter and its fruits, although it be real estate.
7. Of the property leased if the defendant is sued for default in payment of the rental, on account of the property's becoming deteriorated, or on account of having failed to make improvements to which he is bound by the contract, provided any of the circumstances be proved in the manner indicated in article 368.

In this case the owner and the purchaser in the case mentioned in number five may demand an order that they themselves be named repository, and the property shall remain subject to answer the lessee or purchaser when necessary

[Inclosure to No. 310.]

CIVIL CODE.

ART. 1104. Contracts shall be executed in good faith and entail the obligation of complying not only with what is stated in them but with all the consequences that may be engendered by the said contracts, according to equity, custom, and law.

ART. 1138. Every condition shall be fulfilled in the manner the parties really wished or intended it to be fulfilled.

ART. 1145. When no time has been stipulated, the obligation shall be fulfilled immediately if the nature of the obligation, or the manner in which it should be executed, or the place designated for fulfilling it, does not render a term to be fixed by the tribunal necessary.

ART. 1149. The obligor of an alternative obligation is absolved by the performance of one of the things separately comprehended in the obligation, but he can not compel the obligee to accept a part of one and a part of the other.

ART. 1150. In alternative obligations the right of election belongs to the obligor if it has not been expressly granted to the obligee.

ART. 1264. All real actions shall be barred after thirty years and personal actions after twenty years, and no objection for want of title or of good faith shall be raised against the limitation.

The right to proceed by the executive path shall be barred after ten years.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE
Washington, August 15, 1904.

Department has carefully examined Venezuelan Government's complaint on which Bermudez Lake, belonging to New York and Bermudez Company, has been forcibly seized, and finds, quite apart from any question of illegality, no substantial justification for such seizure, which appears, under the circumstances, irregular and wholly unnecessary. It is not even alleged that the company has failed to pay all sums due the Government on asphalt taken and exported. The complaint, moreover, wholly disregards title of mine obtained by company December 7, 1888, under Venezuelan mining law, and definitive title to land obtained by purchase December 14, 1888, which titles in terms give the company as legal proprietor the right to hold and work Bermudez Lake independent of Hamilton concession. Seizure of property enforces on company enormous losses, renders it unable to fulfill existing contracts, and all this in advance of judicial determination which the Venezuelan Government now professes to desire. You will therefore, in the interest of justice and international harmony, request the Venezuelan Government to direct the attorney-general to move the discharge of the receiver and to restore to the company its seized property pending decision reserving all rights in case of denial of justice.

ADEE.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *August 18, 1904.*

Have requested, in compliance with your instructions, that attorney-general move withdrawal receiver and the return of the property to

company. President is in the country and so may not answer at once. Reliably informed that he wants me recalled in order to settle with Secretary. His usual game.

BOWEN.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *August 20, 1904.*

The answer of the Venezuelan Government just received. Is an absolute refusal to comply with your request to withdraw receiver and to return the property to the company. The answer states that Venezuelan Government leaves the decision entirely to the court; that we could logically reserve all rights and undertake diplomatic intervention only after the decision of the court is rendered.

BOWEN.

Mr. Bowen to Mr. Hay.

No. 316.] AMERICAN LEGATION,
Caracas, Venezuela, August 21, 1904.

SIR: I have the honor to inclose herewith copies of the cablegrams that have passed between Washington and this legation since the departure of the last mail, and copies of my correspondence with the Venezuelan foreign office and of papers filed in this legation by the manager of the New York and Bermudez Company during the last two weeks.

I am, etc. HERBERT W. BOWEN.

[Inclosure to No. 316—Copy cablegram received August 15, 1904, at 9 p. m.]

Mr. Adee to Mr. Bowen.

Department has carefully examined the Venezuelan complaint on which Bermudez Lake belonging to the New York and Bermudez Company has been forcibly seized, and finds, quite apart from any question of illegality, no substantial justification for such a step, which appears under the circumstances irregular and wholly unnecessary. It is not even alleged that the company has failed to pay all sums due the Government on asphalt taken and exported. The complaint, moreover, wholly disregards the title of the mine obtained by the company December 7, 1888, under the Venezuelan mining code, and the definitive title to the land obtained by purchase December 14, 1888, which titles appear to give the company as the legal proprietor the right to hold and work the Bermudez Lake independent of the Hamilton concession.

The seizure of the property entails on the company enormous losses, and renders it unable to fulfill existing contracts; all this in advance of judicial determination, which the Venezuelan Government now professes to desire.

You will therefore, in the interest of justice and international harmony, request the Venezuelan Government to direct the attorney-general to move the dismissal of their receiver, and to restore to the company its seized property pending a decision, reserving all rights in case of denial of justice.

ADEE.

[Inclosure to No. 316.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION,
Caracas, Venezuela, August 20, 1904.

MR. MINISTER: My Government has examined carefully the complaint of the Venezuelan Government by virtue of which the asphalt lake belonging to the New York and Bermudez Company was forcibly seized, and finds, quite apart from any question of illegality, that no substantial justification for taking such a step exists. It appears, in fact, irregular and wholly unnecessary. No allegation even is made that the company failed to pay all the sums due to the Venezuelan Government on the asphalt that was taken from the lake, and exported. The complaint, moreover, wholly disregards the title to the lake that was obtained by the company on December 7, 1888, under the Venezuelan mining law, and the definitive title to the land that was obtained by purchase December 14, 1888. Those titles give to the company, as legal proprietor, the right to hold and to work the asphalt lake independently of the Hamilton concession. The seizure of the property entails on the company enormous losses, and renders it unable to fulfill its existing contracts; and the seizure, moreover, was made before any careful judicial investigation was held such as now the Venezuelan Government professes to desire.

In view of these facts, my Government instructs me to request, in the interests of justice and international harmony, that the Venezuelan Government direct the attorney-general of Venezuela to secure the removal of the receiver, and to restore to the company its property pending the final legal settlement of the case.

In making that request I have the honor to reserve all rights in case there be a denial of justice.

I gladly, etc., HERBERT W. BOWEN.

[Inclosure to No. 316.—Cablegram sent August 18, 1904, at 8 a. m.]

Mr. Bowen to Secretary of State.

I have requested, in conformity to your instructions, that the attorney-general move withdrawal of the receiver and the return of the property to the company. The President is in the country and so may not answer at once. Reliably informed that he wants me recalled in order to settle (the case) with the Secretary. His old game.

BOWEN.

[Inclosure to No. 316.—Translation.]

Mr. Sanabria to Mr. Bowen.

CARACAS, *August 20, 1904.*

MR. MINISTER: The circumstance that in my note of the 6th instant all the facts were explained relative to the case which is going on against the New York and Bermudez Company does not permit me to understand the reason which your excellency has had to affirm, among other things, in your note of the 7th instant, that the asphalt mine is in possession of Venezuelan soldiers and of a receiver named by the Government of Venezuela. What you say about the soldiers is absolutely inexact, and the origin to which your excellency attributes the appointment of the receiver does not conform at all to the evidence which the proceedings furnish. It is enough to know that the appointment of the receiver can not be made except by the court, and that the person called upon to exercise duties as such is not selected by the litigants and only has the powers the law indicates.

I deem it unnecessary to insist on those points which already I have had occasion to examine; and since your excellency informs me that my aforesaid note has been sent to Washington, it is firmly hoped that as the charges therein are disproved that are directed against Venezuela, and the matter is given the character which reasonably belongs to it, the Government of the United States, far from concluding that a case for diplomatic intervention has arisen, will recommend to the company, as it has been accustomed to do in analogous cases to its citizens that it should betake itself in defense of the rights which it believes it possesses to the courts of this country. As

is well known, the United States has maintained on more than one occasion the principle that actions relative to the interpretation or existence of contracts made by its citizens with foreign governments can only be decided by the courts of the nation where the contracts were made, and in conformity to the laws that existed there.

I avail, etc.,

GUSTAVO J. SANABRIA.

[Inclosure to No. 316.—Translation.]

Mr. Sanabria to Mr. Bowen.

CARACAS, *August 20, 1904.*

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of the 15th instant relative to the matter of the New York and Bermudez Company. In the notes which up to the present I have directed to your excellency, the Venezuelan Government has submitted to that of the United States, faithfully and in a friendly way, explanations about the proceedings taken against the company—explanations which, as it is just to suppose, will have left the Department of State at Washington well informed and completely satisfied. As to the points contained in the aforesaid note of your excellency, the President of the Republic has charged me to say to you that, as they are all related to the sequence of the action instituted in the courts, the Government leaves entirely the decision of them to the court before which the representatives of the Bermudez Company are to-day defending their rights with all the securities, guarantees, and liberties which the laws and the constitution of the Republic prescribe. Moreover, every question arising from damages or injuries finds in our laws adequate methods of procedure. The reservations which your excellency makes in the last part of the said note, in case diplomatic intervention could be undertaken, require logically and indispensably the conclusion of the action that has been begun, and, consequently, I confirm all that I have the honor to maintain in my previous communications.

Accept, etc.,

GUSTAVO J. SANABRIA.

[Inclosure to No. 316.—Cablegram sent August 20, 1904, at 9 p. m.]

Mr. Bowen to the Secretary of State.

The answer of the Venezuelan Government just received, and is an absolute refusal to comply with your request to withdraw the receiver and to return the property to the company. The answer states that the Venezuelan Government leaves the decision entirely to the court, and that we could logically reserve all rights and undertake diplomatic intervention only after the decision of the court is rendered.

BOWEN.

[Inclosure to No. 316.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION,
Caracas, Venezuela, August 20, 1904.

MR. MINISTER: In answer to your excellency's note, No. 993, of to-day's date, I have the honor to inform you that it will be sent by this next post to my Government, which by this time must have received a copy of the records of the court, showing how the receiver was appointed, and declaration from the persons who were in charge of the lake regarding the presence there of Venezuelan soldiers.

Please accept, etc.,

HERBERT W. BOWEN.

[Inclosure to No. 316.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION,
Caracas, Venezuela, August 20, 1904.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's note, No. 1010, of to-day's date, in which you answer my Government's request to withdraw the receiver from the asphalt lake and to return the property to its American owner by stating that the decision of those questions must be left to the court here.

I shall send the note to Washington by the next mail, in order that it may receive there the consideration it deserves, and I shall take occasion to explain that the said court adjourned on or about the 15th instant for one month, because your excellency's statement that the American company is defending its rights there to-day might be taken literally, which, of course, would be contrary to your intention and desire.

I gladly, etc.,

HERBERT W. BOWEN.

[Inclosure to No. 316.]

CARACAS, VENEZUELA, *August 20, 1904.*

I, Robert K. Wright, managing director of the New York and Bermudez Company, in Venezuela, respectfully appear before you and solemnly and sincerely protest against the Government of Venezuela, the federal court, and court of cassation of Venezuela, the attorney-general of Venezuela, and his assistants, the judge of first instance of the section in which the company's property at Guanoco is situated, and against any and all other persons concerned:

I. For the ex parte and summary proceedings of the court in declaring the Hamilton concession a lease, and in directing sequestration of the company's property at Guanoco, as appears at greater length in my previous protest made before you July 22, 1904.

II. Against the forcible seizure of their property by the judge of first instance of the district, accompanied by military force. I attach hereto a copy of the protest made on the ground at the time by the superintendent of the said company, Frederick R. Bartlett, whose request for a certified copy of same was refused by the judge, said refusal being contrary to the law of Venezuela, and I protest against the same.

III. Against the unwarranted and illegal assumption of authority by the officials of Venezuela over the company's property at Guanoco.

IV. Against the presence on the property of the armed military force of Venezuela, and of the custodian, and of any and all other persons who are not there by permission of said company.

V. Against the sale, or disposition, or removal of any asphalt or of any other property belonging to the company, and also against the use of the same.

VI. Against any and all other acts of whatever nature or kind, whether embodied in this protest or not, which have been or which may be performed and which are or may be in any way prejudicial to the interests of the New York and Bermudez Company.

VII. I demand that the property of the New York and Bermudez Company be returned to it at once and that said company be permitted to enjoy all the proprietary rights over this property that are accorded by the law of nations.

ROBERT K. WRIGHT.

[Inclosure to No. 316—Translation.]

During to-day's sitting (August 1, 1904) the court discharging its duties in connection with the pursuance of the mandate of execution decreed by the federal and cassation courts, copied in the beginning of these documents, all with the end of taking an inventory of the liabilities of the New York and Bermudez Company, there appeared Mr. Frederick R. Bartlett, superintendent of the said company, and stated "I come to amplify my previous statements thus: It is only out of respect for the law that I have permitted the judicial sequestration of the properties owned in this locality by the New York and Bermudez Company by virtue of titles legally obtained. The sequestration referred to having been carried out by the judge of first instance of this section accompanied by military force. I furthermore state that I protest against such acts and proceedings on behalf of the New York and Bermudez Company I represent as superintendent, and I reserve to same said company all its rights in order that it may use them in the proper time and opportunity. I now ask the court to cause a copy of these, my statements, also one of the mandate of execution, to be issued separately and delivered to me through the Secretary's office."

J. FUENTES, *Judge.*
FREDERICK R. BARTLETT, *Superintendent.*
J. M. ARDILLA, *Secretary.*

[Inclosure to No. 316—Translation of original in my possession—Robert K. Wright.]

Mr. Bartlett and Mr. Pinango to Mr. Wright.

GUANOCO, *August 3, 1904.*

DEAR SIR: At 6.30 on the morning of the 28th of July last the man-of-war *Bolivar* anchored at this port and immediately disembarked a military force and several judicial authorities. Both bodies at once proceeded to occupy the superintendent's house, and the workshops, offices, and other buildings of the company, and also that which is at La Brea, where the asphalt lake is situated, were likewise occupied by the military, who issued an absolute prohibition against anyone's entering them or taking anything without the previous permission of the authority. From that day after 16 o'clock in the afternoon no one can pass and repass, and much less the employees of the Bermudez Company, because there are sentinels on guard who forbid every one to pass as if it were in time of war.

We have taken no action on behalf of the rights of the New York and Bermudez Company which we represent, as they roundly refused to accept our protests and disregarded every step we took for that purpose.

Everything has been overrun by the soldiers and thrown into confusion; heed has been paid to nobody, as is proved by the manner in which they took possession of the office of the cashier, without even permitting the salaries of the employees to that day to be paid, nor what the laborers had earned.

The *Bolivar* left on the 30th of the said month of July for Guiria with the representative of the national revenue, leaving here the greater part of the forces it brought, and we were left here struggling with the judge of first instance, who would accept nothing from us without the order of the representative of the national revenue; at last we succeeded in getting him to enter in the respective proceedings the protest, a simple copy of which I inclose in this letter, because we were refused a certified copy; and therefore it would not be strange if they ventured to abstract the folio on which it is found, signed by the judge, his secretary, and Mr. Bartlett.

The day before yesterday the *Bolivar* returned; and on the representative of the national revenue's being informed of the protest which the judge had accepted from us he manifested great displeasure and opined with the judge that we should not be given the certified copy referred to, which we were requesting, because, as he said, the judge could accede to nothing according to article 205 of the code of civil procedure.

We are living in private houses, because from the said day, the 28th, notice was given us to disoccupy the company's house, and we had immediately to seek refuge elsewhere.

We have acted with great, too great, prudence, for although the proceedings employed have exceeded the limits of the law, we have offered no resistance whatsoever.

The judge and the representative of the national revenue are still making the inventory and they will probably finish to-morrow, for they are not making it with much detail.

Since yesterday they have been busy building a house, of palm leaves, to serve as quarters for a guard.

We send you this report so that you should be aware of what has taken place, and in execution of our duty.

Awaiting your orders, we are, etc.,

F. R. BARTLETT.
J. M. PIÑANGO.

P. S.—If you think it necessary for me to go to that capital, please advise me accordingly via Trinadad or by telegraph via Maturin.

PIÑANGO.

NOTE.—F. R. Bartlett is the superintendent of the company's plant and operations at Guanoco.

J. M. Piñango is a Venezuelan attorney at law and is in the employ of the company, holding its power of attorney for all legal matters concerning the old State of Sucre, now part of the State of Bermudez, and in which the company's property at Guanoco is situated.

ROBERT K. WRIGHT.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 29, 1904.

New York and Bermudez Asphalt Company complain that Venezuelan consul at Philadelphia refuses to authenticate papers necessary for use in Venezuelan courts. Request Venezuelan Government to instruct consul to authenticate papers promptly in usual and proper terms in order to enable New York and Bermudez Company to prepare its case before the Venezuelan courts and avoid a denial of justice.

ADEE.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *September 2, 1904—10.25 a. m.*

Venezuelan Government answers thus: While the details of the occurrence are being inquired into instructions have been reiterated to the consul at Philadelphia to fulfill strictly his consular duties, among which is the authentication of signatures.

BOWEN.

Mr. Bowen to Mr. Hay.

AMERICAN LEGATION,
Caracas, Venezuela, September 4, 1904.

SIR: I have the honor to inform you that yesterday, while taking leave of the Venezuelan minister for foreign affairs, I said to him, "Why in your recent note to me did you say that my statement was untrue that Venezuelan soldiers are in possession of the New York and Bermudez asphalt lake? I sent for photographs of the soldiers and barracks long ago, and when they reach Washington and are compared with the denial in your note, what do you suppose the authorities at Washington will think about the matter?" He looked surprised, annoyed, and uneasy, but finally said, "I did not mean that there were no Venezuelan soldiers at the lake, but only that they were not in possession of it. They are not in control of it, but are acting under the orders of the court." I assured him that his explanation was very satisfactory to me, and that I should have much pleasure in communicating it to you.

I am, etc.,

HERBERT W. BOWEN.

Mr. Bowen to Mr. Hay.

No. 320.] AMERICAN LEGATION,
Caracas, Venezuela, September 4, 1904.

SIR: I have the honor to inclose herewith copies of your cablegram to me, of my note to the minister of foreign affairs, of his answer, and of my cablegram to you, in regard to the action of the Venezuelan

consul at Philadelphia in refusing to authenticate papers presented to him by the New York and Bermudez Company, and also two documents which I was requested to send to you by the manager of the company.

I am, etc., HERBERT W. BOWEN.

[Inclosure to No. 320—Cablegram received August 29, 1904, at 7 p. m.]

Mr. Adee to Mr. Bowen.

New York and Bermudez Company complain that Venezuelan consul at Philadelphia refuses to authenticate papers necessary for use in Venezuelan courts. Request Venezuelan Government to instruct the consul to authenticate papers promptly in the usual and proper terms in order to enable the New York and Bermudez Company to prepare its case before the Venezuelan courts and to avoid a denial of justice.

ADEE.

[Inclosure to No. 320.]

Mr. Bowen to Mr. Sanabria.

AMERICAN LEGATION, *Caracas, August 30, 1904.*

Mr. MINISTER: As the New York and Bermudez Company complain that the Venezuelan consul at Philadelphia refuses to authenticate papers necessary for use in the Venezuelan courts, I have the honor to request, in conformity to instructions I have received from my Government, that the Venezuelan Government direct its consul at Philadelphia to authenticate the company's papers promptly in the usual and proper terms in order that there may be no denial of justice to the company and that it may prepare its case before the Venezuelan courts.

I gladly, etc., HERBERT W. BOWEN.

[Inclosure to No. 320.—Translation.]

Mr. Sanabria to Mr. Bowen.

CARACAS, *September 1, 1904.*

Mr. MINISTER: In acknowledging the receipt of your excellency's courteous note, dated the 30th ultimo, I have the honor to inform you that the complaint which your excellency makes, in conformity with instructions of the Department of State, has received the immediate attention of this office, and while the details of the occurrence are being inquired into, instructions have been reiterated to the consul at Philadelphia to fulfill strictly his consular duties, among which is the authentication of signatures.

I avail, etc., GUSTAVO J. SANABRIA.

[Inclosure to No. 320.—Telegram.]

Mr. Bowen to Secretary of State.

CARACAS, *September 2, 1904—10.25 a. m.*

Venezuelan Government answers thus: While the details of the occurrence are being inquired into instructions have been reiterated to the consul at Philadelphia to fulfill strictly his consular duties, among which is the authentication of signatures.

BOWEN.

[Inclosure to No. 320.]

Citizen President of the Federal and Cassation Court in his character as Judge of First Instance:

I, Robert K. Wright, citizen of the United States, residing in this capital, acting for and in the name of the New York and Bermudez Company, of which I am the managing director, before you with the greatest respect show:

Neither in the proceedings of the suit brought against this company by the attorney-general of the nation, before this court, nor in the records of the sequestration which

this court granted in the same suit, appears stated the means of transmission employed by the court to remit to the commissioned judge, being the judge of first instance in Cumana, the commission for the execution of the above-mentioned sequestration; but it appears in the documents of this tribunal that the above-mentioned commission was placed in the hands of Mr. Ambrose H. Carner, who was named custodian of the property of this company. Apart from the resulting hurry, the irregularity of such proceeding is evident from a mere inspection of article 237 of the code of civil procedure, which states that the post-offices are the only legal means of transmission in such cases; although if necessary, which is denied in this case, a special carrier may be employed. The last part of article 238 of the same code states that the judge must select the carrier under his responsibility, and nowhere in the records of this case does it appear that the judge selected Mr. Carner as such carrier.

Moreover, the 26th day of last July this court issued a decree on the petition of the company which I represent, setting forth that the parties to this suit would be notified of the result of the commission for the execution of the sequestration, as intended in article 378 of the code of civil procedure, and it is of public notoriety that the man-of-war *Bolivar* arrived at La Guaira, proceeding from Guanoco, in the first days of the present month of August, having on board the national fiscal, Dr. José Vicente Iribarren, who went there with Ambrose H. Carner to make effective the execution of the decreed sequestration. Since this time Doctor Iribarren has been in Caracas, and during all these days up to the 14th of August and to to-day the result of the sequestration has not been presented to the court. In addition to this, Mr. Carner having taken up his residence on the property of the company at Guanoco, and, there existing no rapid means of communicating with the court, the fact that the duties have been performed which were so irregularly intrusted to him, the company during all this time continues to suffer immense loss and damages, which it can not allow to pass in silence.

It has actually come to my notice by correspondence with the superintendent of the company's mine in Guanoco, Mr. Frederick R. Bartlett, that Mr. Carner, accompanied by the national fiscal, Dr. Jose Vicente Iribarren, and by the commissioned judge, *and by armed military force*, arrived in the man-of-war *Bolivar*, *and occupied in military manner the property of the company*, without permitting the cashier to pay the employees and the workmen the salaries and wages that were due them, and that the said superintendent, with great difficulty, obtained the acceptance of his protest, which he made in the name of the company before the commissioned judge, and of which said judge absolutely refused to give him a certified copy. I have also this recent knowledge that the steamer *Kennet* sailed the 21st of August from Port of Spain, with charter to go to Guanoco *to load asphalt*, and to which I call the especial attention of the court, and with the greatest respect to the same, and in the fulfillment of my duties as managing director of the company, I present in its name the most formal and categorical protest against the above-expressed acts which have caused and continue to cause immense loss and damages to said company. I restate herein in all its parts the protest made by the superintendent, Mr. Bartlett, and I ask that this writing be made part of the record of sequestration, and I ask that there be sent to me a certified copy of the same.

Caracas, August 25, 1904.

ROBERT K. WRIGHT.

[Inclosure to No. 320.]

Mr. Wright to Mr. Bowen.

NEW YORK AND BERMUDEZ COMPANY,
Caracas, Venezuela, September 1, 1904.

DEAR SIR: I desire to call your attention and through you that of the Department of State to the following facts:

The present suit against the New York and Bermudez Company for the alleged nonfulfillment of certain terms of the Hamilton concession, and the proceedings for the seizure of the company's property on the pretext that said concession is a lease, are being pursued as two separate actions, both of which are being tried before the judge of first instance, who corresponds roughly to our trial judge. After this judge renders his decision there is an appeal to the federal and cassation court, of which this trial judge is president, this being the court of last resort, corresponding roughly to our court in banc.

When it is fully appreciated that all these judges and courts exist solely during the will and pleasure of the President of Venezuela, and that whenever any change

takes place in the composition of the court by death, resignation, removal, or sickness, all proceedings revert to the beginning, it will be readily seen that the Venezuelan Government, being in possession of the property, can prolong the proceedings and their decision for an indefinite period while still conforming to the letter of the law. It is thoroughly understood here that no matter what evidence is presented to the court the decision will be against us in this court, thus compelling us to make an appeal to the court in banc, and prolonging the proceedings over a series of years, even until the Hamilton concession expires by limitation.

Unless the United States Government takes some radical steps to compel the Venezuelan Government to return possession of the property, this company will suffer continuing wrong, causing us immense loss and damage.

Yours, etc.,

THE NEW YORK AND BERMUDEZ COMPANY,
By ROBERT K. WRIGHT, *Managing Director*.

The Acting Secretary of State to Minister Bowen.

No. 218.] DEPARTMENT OF STATE,
Washington, September 10, 1904.

SIR: Inclosed herewith are certain affidavits in the case of the New York and Bermudez Company versus Venezuela, duly authenticated by the Venezuelan consul at Philadelphia. As you are already informed, these affidavits were heretofore presented to the consul, but he declined to certify them. You will request the Venezuelan Government to permit these affidavits to be filed and admitted in the above-mentioned case, having the same effect as if they had been authenticated and filed in court within the properly limited time.

I am, etc., ALVEY A. ADEE,
Acting Secretary.

The Acting Secretary of State to Minister Bowen.

No. 219.] DEPARTMENT OF STATE,
Washington, September 13, 1904.

SIR: I inclose for your information copies of a letter of the 9th instant from Mr. Avery D. Andrews, vice-president of the New York and Bermudez Company, and an affidavit transmitted to the Department therewith.

It appears from the inclosure of the letter of Mr. Andrews that the statement of Mr. Steffen, who represented the company in its business with the Venezuelan consul in Philadelphia, that the consul refused to certify the papers presented to him for authentication, on the ground that a legal controversy was pending between the company and his Government, is insisted upon by the company and its attorney, notwithstanding the contention of the consul that his certificate was withheld only because he was not allowed sufficient time in which to make it.

I am, etc., ALVEY A. ADEE,
Acting Secretary.

Mr. Hutchinson to Mr. Hay.

No. 326.] AMERICAN LEGATION,
Caracas, September 17, 1904.

SIR: I have the honor to inclose a set of duplicates of five affidavits, sent me by Mr. Robert K. Wright, manager of the New York and Bermudez Company here, and which are the statements of several employees of the said company at Guanoco, where certain English and foreign workmen, who were in the employ of the company, were said to have been forced to work for the receiver of the company's property, Mr. A. H. Carner, at the point of the Venezuelan bayonet.

I have heard from a good source here that a few days ago Mr. Carner had an interview with the minister of foreign relations here, and that he affirmed that the charges of having made the company's men work at the point of the bayonet were absolutely without foundation and were the fabrications of the company.

It is possible that many workmen, perhaps most of the workmen, were not forced as described, but I have no doubt a few were subjected to rough treatment, and I have faith in the affidavits so far as they go.

The company, by its attorney here, presented its "solicitude" this week. I will keep the Department acquainted with the results as they occur.

The company's attorney had his office broken into, Manager Wright tells me, one Sunday not long ago, but although money was at hand none was taken, and only the company's papers were tossed about in evident search of documents to be used against the company. I can not vouch for the truth of this incident, of course, but I do not think Mr. Wright would knowingly misinform me.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure to No. 326.]

I, Alfred Webbe, make oath, and say as follows:

I was employed by the New York and Bermudez Company at Guanoco, in the Republic of Venezuela, as storekeeper.

On the 28th of July, 1904, about 10 o'clock in the forenoon, Mr. A. H. Carner, accompanied by several Government officials and soldiers, arrived at Guanoco on the gunboat *Bolivar*. They immediately proceeded to the headquarters and offices of the New York and Bermudez Company and stationed soldiers at each window and door, armed with rifles, and their officers carrying swords; they also surrounded the buildings.

Shortly after this I attempted to pass out by the back gate, but was stopped by the soldiers on guard. I then tried to pass through the other doors, but was prevented and compelled to remain in the small court within the building until 10 o'clock at night. I then saw Mr. Carner and asked if I could go to my room to retire for the night. He said I would have to acquaint the officer of the night patrol, who would accompany me to my room. This I did, and after being challenged by the sentry, and the officer of the night patrol giving the password, I was allowed to enter my room, and was cautioned that to leave same without permission would be dangerous.

The following day, July 29, I was escorted to my meals by armed soldiers, who kept constant watch over me and would not let me leave the building, and at night was again escorted to my room by armed soldiers, who stood guard at the door at night.

The following day, July 30, Mr. Carner placed me in the storeroom to issue supplies as directed by him, but still kept me under surveillance of armed guard. While in this position I supplied to officers and soldiers, and also sent a large supply of foodstuffs to gunboat *Bolivar*, as per Mr. Carner's instructions, who told me that there were 100 men to feed on *Bolivar*.

Several persons were in the building when it was surrounded by the soldiers and were compelled to remain there; others were allowed to pass within the guard, but were not allowed to pass out, and Mr. Carner boasted of its being a nice trap for them. One woman also was detained until late at night, and she had become frantic with grief.

On July 28 Mr. Carner demanded the keys of the storeroom from me, and upon receiving them turned them over to a Venezuelan officer.

On July 28 the foreman carpenter, Edward Bryant, was allowed to pass within the guards, and I was present when he reported to Mr. Carner of ill-treatment he had received on board the *Bolivar*, stating that his thumbs had been tied firmly together, and that 26 rifles had been placed across his stomach and kept there until he was exhausted.

Guards were stationed at the wharf and all the buildings, and no one was allowed to pass without a written pass signed by Mr. Carner.

On July 30 the steamship *Rescue* arrived at Guanoco at night, with Mr. L. A. Kuhn, an employee of the New York and Bermudez Company, who was escorted to headquarters by armed soldiers, who kept constant guard over him until he returned on the steamship *Rescue* July 31.

ALFRED WEBBE.

Sworn to at No. 32 St. Vincent street, Port of Spain, in the island of Trinidad, this 12th day of September, A. D. 1904, before me.

[Notarial seal.] VINCENT LEON WEHEKIND, *Notary Public.*

(Certificate as follows:) Certifico que el Señor Vincent Leon Wehekind es notario publico y que es su firma la que antecede. Setiembre 14 de 1904. El Consul. (Signed) Barcelo.

Seal of the consulate of the United States of Venezuela in Trinidad.

[Inclosure to No. 326.]

I, Joseph Meyers, make oath and say as follows:

On July 28 I was employed by the New York and Bermudez Company at Guanoco, Venezuela, as carpenter, and was working near the wharf. Early in the forenoon Mr. A. H. Carner and about 60 armed soldiers landed from the gunboat *Bolivar*. I was immediately arrested, and was not allowed to move from where I was working until some soldiers and officers had returned from headquarters, when I was told to go to work.

I was working under Edward Bryant, and saw him struck several times with a sword and taken on board the gunboat *Bolivar*. I saw him when he came from the *Bolivar* and he was nearly exhausted, and sat down and told me that his hands had been tied and 26 rifles placed across his stomach and kept there until he hardly could breathe. I saw the marks on his thumbs where they had been cut by the cord. I was not allowed any food until the following Sunday, July 31, and was then told I would not be given any unless I went to work, which I agreed to do. I was guarded by soldiers armed with rifles and officers armed with swords, who were stationed all around, and when I returned to work was always guarded by the soldiers.

JOSEPH MEYERS.

Sworn to at No. 19 St. Vincent street, Port of Spain, in the island of Trinidad, this 14th day of September, 1904, before me.

A. V. M. THAVENOT, *Notary Public.*

[Notarial seal.]

Certifico que el Señor A. M. Thavenot es Notario Publico y que la anterior firma es autentica.

Setiembre 14 de 1904.

El Consul,

BARCELO.

[Seal of the consulate of the United States of Venezuela in Trinidad.]

[Inclosure to No. 326.]

I, Frederick Adolphus, make oath and say as follows:

I was employed by the New York and Bermudez Company at Guanoco as assistant engineer, and on the 28th of July, 1904, Mr. A. H. Carner, accompanied by several Government officials, and I should say about 60 soldiers, arrived at Guanoco on the

gunboat *Bolivar*. They proceeded to the company's offices and surrounded the building containing same, placing guards at each door and window. The soldiers were armed with rifles and the officers carried swords. I, along with several others who were anxious to know what was taking place, was allowed to pass the guards, but could not return to our quarters until very late, being first compelled to obtain a written pass signed by Mr. Carner.

On the 30th of July the steamship *Rescue* arrived at Guanoco with Mr. L. A. Kuhn, the engineer employed by the New York and Bermudez Company, on board. On coming alongside the pier soldiers were immediately placed to guard him and Mr. Kuhn was accompanied to headquarters by soldiers, who remained with him during the day and his stay at Guanoco. I attempted to speak to Mr. Kuhn about my family in Trinidad, but was prevented by the soldiers who were with him. Many other persons, also anxious to hear some news of their families, were prevented from having any conversation with him.

FREDERICK (his X mark) ADOLPHUS.

Sworn to at No. 32 St. Vincent street, Port of Spain, in the island of Trinidad, this 12th day of September, A. D. 1904, before me,

VINCENT LEON WEHEKIND, *Notary Public*.

[Notarial seal.]

Certifico que el Señor Vincent Leon Wehekind es Notario Publico y que es su firma la que antecede.

Setiembre 14 de 1904.

El consul,

BARCELO.

[Seal of the consulate of the United States of Venezuela in Trinidad.]

[Inclosure to No. 326.]

I, Prince Joseph Alexander, make oath and say as follows:

I was employed by the New York and Bermudez Company at Guanoco, Venezuela, as cook.

On the 28th of July, 1904, early in the forenoon, Mr. A. H. Carner and several officers and soldiers arrived on the gunboat *Bolivar*. They came up to headquarters where I was working and surrounded the building and placed soldiers at each window and door. The officers carried swords and the soldiers were armed with rifles. There were about 50 of them.

I was not allowed to leave the building, and had to obtain a pass before I could enter my room, which is in the same building, to retire, and during the day when I was working I was constantly watched. I attempted to pass out during the day, but was stopped by an officer.

I was subjected to this treatment for a number of days. It was boasted by the officers and the soldiers that they were going to capture the steamship *Viking*, and when the steamship *Rescue* arrived on July 30 they were confident that they were in a position to do so. They mistook the whistle of the steamship *Rescue* for that of the steamship *Viking*. They left a small guard at headquarters and the majority of them went to the wharf. Mr. L. A. Kuhn arrived on the steamship *Rescue* and was constantly guarded by armed soldiers.

Later, while I was attempting to have my time adjusted, I was ordered from the office, and an officer caught me by the shoulder and handled me roughly and said, "Come, I will take you to prison." I resisted and he left me and ran for a sword; in the meantime a soldier held a rifle on me. I was finally released and returned to work in the kitchen.

PRINCE JOSEPH ALEXANDER.

Sworn to at No. 32 St. Vincent street, Port of Spain, in the island of Trinidad, this 12th day of September, A. D. 1904, before me.

VINCENT LEON WEHEKIND,
Notary Public.

Certifico que el Señor Vincent Leon Wehekind es notario publico y que la firma que antecede es la suya.

El consul.

BARCELO.

[Seal of the consulate of the United States of Venezuela in Trinidad.]

[Inclosure to No. 326.]

TRINIDAD.

I, James Alleyne, make oath and say as follows:

I was employed by the New York and Bermudez Company at Guanoco, Venezuela. On the 28th of July, 1904, I was working on the railroad line about 4 miles from headquarters. It is customary for a train to run between 11 and 12 o'clock bringing the men's breakfast. On that day no train came up, and about 4 o'clock a woman walked up bringing her husband's breakfast. She notified us that Mr. A. H. Carner and a party of Venezuelan Government officials and soldiers had seized all the company's property. On hearing this, the entire gang walked down. On arriving opposite the company's office at headquarters we were stopped by soldiers on guard and our tools taken from us. I saw about 50 or 60 soldiers at headquarters. Later on same day, as is customary, I attempted to get to the company's store to purchase my usual supply of food, but was stopped by the guards at the entrance and had to remain without food until 12 o'clock on July 30, when those of us who were guarded by soldiers at the ranch made such a demonstration that Mr. Carner allowed us to go to headquarters for food.

I was compelled to work or not get any food, and while at work was guarded by armed soldiers who returned with me and others who had been forced to work, and the soldiers guarded the ranch and would allow no one to pass.

(Signed) JAMES ALLEYNE.

Sworn to at No. 32 St. Vincent street, Port of Spain, in the island of Trinidad, this 12th day of September, A. D. 1904, before me.

(Signed) VINCENT LEON WEHEKIND,
Notarial seal. *Notary Public.*

Certifico que el Señor Vincent Leon Wehekind es notario publico y que la firma que antecede es la suya.

El consul. BARCELO.

[Seal of the consulate of the United States of Venezuela in Trinidad.]

Mr. Hutchinson to Mr. Hay.

No. 328.] AMERICAN LEGATION,
Caracas, September 26, 1904.

SIR: I have the honor to acknowledge the receipt of the Department's number 218, of September 10, 1904, with inclosures, instructing Mr. Bowen to request the Venezuelan Government to permit the affidavits, which were delayed through the inaction of the Venezuelan consul at Philadelphia, to be filed and admitted in the case of the New York and Bermudez Company as if they had been authenticated and filed in court within the properly limited time.

In reply I have the honor to report that it has not been necessary to ask the said permission from the Venezuelan Government, as the manager of the New York and Bermudez Company here, Captain Wright, informs me that the affidavits have arrived in time for presentation in due course of procedure according to the Venezuelan code.

I have, etc.,

NORMAN HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

No. 329.] AMERICAN LEGATION,
Caracas, September 26, 1904.

SIR: I have the honor to acknowledge the receipt of the Department's number 219, of September 13, 1904, addressed to Mr. Bowen, and inclosing a letter from the vice-president of the New York and

Bermudez Company, and a copy of an affidavit of one of the said company's attorneys in Philadelphia relative to the failure of the Venezuelan consul in said city to authenticate certain legal documents.

In reply I beg to state that I will mention the facts in the case informally to Señor Sanabria, minister of foreign relations, so that he may take whatever steps he thinks necessary for the proper discharge in future of the duties of the Venezuelan consul in Philadelphia.

I have, etc., NORMAN HUTCHINSON.

The Acting Secretary of State to Chargé Hutchinson.

No. 222.] DEPARTMENT OF STATE,
Washington, September 26, 1904.

SIR: The Department has received Mr. Bowen's No. 316, of the 21st ultimo, inclosing a copy and translation of the note of Señor Sanabria, Venezuelan minister of foreign relations, of the 20th of August, in reply to Mr. Bowen's note of the 20th of the same month, requesting the Venezuelan Government to direct its attorney-general to move the discharge of the receiver and the restoration of the Bermudez lake to the New York and Bermudez Company, its lawful owner, pending the trial and the determination of the suits lately brought against that company by the Venezuelan Government.

From the tenor of Señor Sanabria's note, it would naturally be inferred that he has not correctly apprehended the purport of this Government's request.

While not directly declining to comply with that request, Señor Salabria seems to suppose that he has impliedly denied it, when he declares that, "as is well known, the United States has mentioned on more than one occasion the principle that actions relative to the interpretation or existence of contracts made by its citizens with foreign governments can only be decided by the courts of the nation where the contracts were made, and in conformity with the laws that existed there."

The United States has undoubtedly acted on more than one occasion upon the principle that questions relative to the interpretation or existence of contracts made by its citizens with foreign governments presumptively fall within the cognizance of the local courts, and it has said nothing inconsistent with that principle on the present occasion. It has, on the contrary, been endeavoring to uphold it, against the action of the Venezuelan Government in depriving the New York and Bermudez Company of its extensive and valuable properties on a judicial order made ex parte and in entire disregard of the company's titles.

It is established by the records in the case that the Venezuelan Government, represented by its attorney-general, went into one of its courts and, upon a complaint in which the mining and land titles obtained by the company in 1888 were disregarded, secured an order for the appointment of a "receiver" for the company's property, on the pretext that the company was a mere "lessee" under the Hamilton concession of 1883; and this was done ex parte,

without affording the company an opportunity to show cause why its property should not be so taken from it.

While it is stated in the order for the appointment of a "receiver" that the "extraordinary circumstances" required by law to justify such action had been established, and while it has been stated that the "receiver was appointed as a precautionary measure," no substantial foundation whatever has been shown for either of these assertions, no disclosure or description has been attempted, and this Government is at a loss to imagine any that could be suggested with a show of seriousness, much less of plausibility. As to the "extraordinary circumstances" that were alleged to exist, the only one which any attempt was made to establish was that the company had failed to "canalize" or dredge an obscure stream in the recesses of the old State of Bermudez, in no possible way connected with the use of company's property. The supposition that this failure, which, if it existed, had existed for twenty years, without any complaint or remonstrance on the part of the Venezuelan Government suddenly created an emergency, which justified the seizure of the company's property, would be manifestly frivolous, even if the company had been a mere "lessee" under the Hamilton concession.

But it is not alone the frivolity of the charge that shocks one's sense of justice in the present instance. It is a fact that on July 17, 1900, upon the application of Mr. A. H. Carner, the "present receiver" of the property, but then managing director of the New York and Bermudez Company in Venezuela, the Venezulan Government, through Dr. Guillermo Tell Villegas Pulido, its minister of fomento, issued a decree declaring:

"That the New York and Bermudez Company has fulfilled up to date the engagements and obligations of the contract of which it is concessionary, entered into with the executive power on the 15th of September, 1883, to which additions were made on the 19th of October following, approved by National Congress by law of the 5th of June, 1884, and confirmed by the high federal court, by sentence of August 23, 1898, and that therefore the said contract is in full force and effect."

General Castro was then, as he is now, President of Venezuela. The Hamilton concession had been in force for seventeen years, and if the stream in question is "uncanalized" now it was in the same condition then, nor has there been during the intervening four years any complaint or representation to the company of any failure on that score. It is evident, therefore, that the supposition of emergency is destitute of foundation, so that it would afford no justification for the seizure of the company's property, even if the company had been a mere "lessee."

But, the fact was well known to the Venezuelan Government that the company, availing itself of the Venezuelan laws governing the acquisition of titles to mines and wild lands, obtained on December 7, 1888, by purchase, a definite title conveying to it the Bermudez lake deposit and a right to work it for ninety-nine years, and further obtained, on the 14th of the same month, the title to and absolute property in a tract of public lands, including and extending beyond the asphalt deposit itself. Of these facts the Venezuelan Government can not deny knowledge, since the titles have been formally

recognized by it and form part of its records. Indeed, when President Crespo, by his decree of January 4, 1898, attempted arbitrarily to terminate the Hamilton concession, he expressly reserved the rights belonging to the company by virtue of its mining titles. These titles have not been impeached, but if they had been they would, by the universal principles of jurisprudence written in the law of Spanish America as well as of the United States, give the company a clear right to hold the property till they were set aside by a legal decision duly and fairly rendered.

But while the so-called "receivership" was decreed in entire disregard of the company's rights and in a manner neglectful of the plainest principles of justice, it is also necessary to point out that in its execution and management it has borne none of the characteristics of a legal proceeding.

The proceedings of the "receiver" have been conducted clandestinely, and every device has been employed to conceal his transactions. Charters of vessels to take away the company's property have been made secretly, and even their existence has been denied. When the steamer *Kennett*, whose chartering for Guanoco had been repeatedly denied, lately arrived in New York from that place with asphalt taken by the "receiver," not from Bermudez Lake, but from deposits previously mined and stored by the company, all information was refused as to the destination of her cargo, which was consigned to the captain, who in turn declared that he knew nothing about it.

These transactions appear to bear none of the marks of a bona fide receivership; but, on the contrary, they characterize the recent proceeding as in fact an act of arbitrary and unlawful spoliation, though clad in legal forms.

The Government of the United States has sought to avoid even the appearance of interfering with or making any demands upon the Venezuelan courts, and it has not so interfered nor made any such demands. This Government has, however, requested that of Venezuela to undo its own wrong, by directing its attorney-general to go into court and ask for the discharge of the "receiver," so that the property of the New York and Bermudez Company may be restored to its possession, there to remain till a lawful and just decision shall have shown that the company is not entitled to such possession. This it is in the power of the Venezuelan Government to do, and the Government of the United States must, under the circumstances, renew and earnestly press its request. Such compliance would be but an act of respect on the part of the Venezuelan Government to its own tribunals, whose process has been perverted to the perpetration of a grave injustice, the continuance of which this Government can not view without deep concern. It is evident that the avowed object of the proceedings was for all substantial purposes accomplished before they were fairly begun, and that, unless this condition of things shall be remedied, their further prosecution will be practically superfluous, their apparent object having already been accomplished. The Government of the United States is desirous to show toward that of Venezuela every possible consideration. It therefore indulges the hope that the latter will, as an act due to substantial justice, remove the present cause for complaint. But it is proper to add that the Government of the United States in any event can not stand by and

permit the property of American citizens to be seized and appropriated by any foreign government through a gross and palpable perversion of the forms in which justice is administered in order to defeat the ends of justice.

You are directed to read this instruction to the minister of foreign relations and to leave with him a copy of it.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.

Mr. Hutchinson to Mr. Hay.

No. 332.] AMERICAN LEGATION,
Caracas, September 27, 1904.

SIR: I have the honor to inclose a copy of a letter from Captain Wright, managing director of the New York and Bermudez Company, in Caracas, and my acknowledgment of the same, together with a copy and translation of papers in an action brought in the civil court of first instance, by Señor Francisco Arroyo Parejo, attorney-general of the United States of Venezuela, and charging the above-mentioned company with assisting the late Matos revolution, through the medium of its directors in New York, with large sums of money, amounting to at least $130,000, part of which sum, it is charged, was used for the purpose of buying for the leader of the revolution the steamer used as a gunboat called *Ban-Righ.*

The attorney-general states that until a short time ago the chief of the Executive did not possess the accumulation of evidence which he now has, intimating that the action would, if possible, have been brought much earlier.

According to the charge, the company kept no itemized statement of the money given toward aiding the revolution, but put the amounts down to a certain account, which was called "Government relations," and represented "all expenses incurred for Venezuela."

The attorney-general states that he is instructed by the Executive to demand "serious damages" from the company, which ought to have maintained a strict neutrality, for assisting the late revolution, and that, for the purposes of jurisdiction only, he mentions a nominal sum of damages, amounting to $4,000; but experts shall be called into the trial to determine the real and actual damages.

Captain Wright, the managing director of the company, was called to appear to answer the foregoing charge ten working days after he was served with the papers, which was on September 22 at 3 p. m.

I have also the honor to inclose copies of five affidavits, copies of which were left with Captain Wright. These affidavits accompanied the papers charging, under a separate action from that already instituted (i. e., breach of contract, loss of concession), the New York and Bermudez Company with complicity, as before said, in the late Matos revolution.

The evidence evinced by the affidavits is considered of an exceedingly hearsay character by Captain Wright and other parties here, and certainly, without further evidence, the Venezuelan Government's new charge against the company would be lacking the legal

conception of good evidence. It is hoped that the evidence is, and can never be anything more than, valueless hearsay evidence.

Even should the company be beaten in the action in question, in the court of first instance, there remain two appeals to higher courts, and this will give the Department ample time to consider all the evidence and character of the evidence used in the suit.

As news comes to hand concerning the subject of this dispatch, it will be promptly transmitted to the Department.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure to No. 332.]

Mr. Wright to Mr. Hutchinson.

NEW YORK AND BERMUDEZ COMPANY,
Caracas, Venezuela, September 30, 1904.

DEAR SIR: I beg to hand you herewith the following documents: In regard to the "civil suit for assisting the revolution" recently instituted against this company by the Venezuelan Government, two copies of document 8-1, the demand against the company (libel); two copies of English translation of the same; document 8-2; one copy of the documents referred to in the libel, consisting of affidavits made by O. E. Thurber, William Young Kinleyside, Amzi Lorenzo Barber (two), and Charles Y. Baldwin. I handed you one copy of this document a few days ago, which you will please retain. In this document 8-2, on the first page of the first affidavit of Amzi Lorenzo Barber, there is mentioned Exhibit A. This Exhibit A is merely a copy of the affidavits of O. E. Thurber, which is attached hereto, and I did not think it necessary to duplicate it. You will notice that on the copy of 8-2, which I inclose, is a note to that effect made on the bottom; it is also noted in the body of the affidavit. Will you please mark your copy in the same way? I am sending two copies of all these, so that you may retain one copy and forward one to the Department of State.

Yours, etc.,

ROBERT K. WRIGHT.

[Inclosure to No. 332.]

Mr. Hutchinson to Mr. Wright.

SEPTEMBER 30, 1904.

DEAR SIR: I have to acknowledge the receipt of your letter of to-day, inclosing copies and translations of the "libel" brought against your company by the Venezuelan Government, charging the company, through its directors in New York, with assisting the late Matos revolution; also inclosing copies of five affidavits which accompanied the "libel."

The proper copies and translations will be forwarded to the Department of State at Washington, with such other particulars as I possess, and the extra copies you inclosed will be retained for the legation files.

I am, etc.,

NORMAN HUTCHINSON.

[Inclosure to No. 332.]

To the judge of the first instance in civil causes of the western section in the federal district:

I, Francisco Arroyo Parejo, general attorney of the nation, acting in such capacity, come before you and with all due respect state: Since the middle of the year 1901, period in which the rebellious purposes of many an individual against the legally established Government became clear, and which put into practice a few months later, gave rise to the movement known by the name of "Liberating revolution," the national authorities suspected that the corporation under the name of the New York and Ber-

mudez Company had an understanding with the principals and well-known agents of the revolution to that treacherous end. The action of the Government to restrain and punish the condemnable proceedings of the above-mentioned company was at that time hindered by the consideration that said company had before the highest tribunal of Venezuela a suit, in the course of which it was maliciously assured that official influence had been used in favor of the other party in the suit. Some repressing or strong measure might have given credit to such an unfounded assertion, and it was not wished that the impartiality of the judges who had to decide on that litigation could be suspected. Moreover, the chief of the Executive did not possess at the time the accumulation of evidence which he now has, which proves the active and efficacious part which the above-mentioned company had in that unaccountable rebellion, which cost the country so many lives and sacrifices. The chief of the revolution and the company having come to an agreement when the former went to New York in the month of June, 1901, the latter began to supply the necessary funds to start the campaigning, and to this end General Matos went to Europe and Mr. Francis V. Greene, the then president of the National Asphalt Company, managing director of the New Trinidad Lake Asphalt Company, and one of the directors of the New York and Bermudez Company, who had under his care all the business of said company in Venezuela, went to meet him in the month of July to conclude the purchase of a steamer and all the necessary war elements.

They first met in Paris, then Greene went to London, and then to Glasgow, where he arrived in the beginning of the month of August, to inspect several steamers that were for sale. On his return to Paris he drew through the Credit Lyonnaise against the Seaboard National Bank of New York, of which Greene was one of the directors and where the trust, of which the New York and Bermudez Company formed one part, had an account. Said check, which amounted to the sum of $100,000, was ordered to be paid by Mr. Sewall, secretary of the trust, who ordered the cashier to charge with that amount a certain account called "Government relations," which contained, without being itemized, all expenses incurred for Venezuela. A few days later another check amounting to $30,000 was drawn, and cashed and noted in the same way. A few months after this, and as a result of Greene's trip to Europe, there appeared off the Venezuelan coast, fitted out as a warship, loaded with abundant elements of war, and carrying on board the chief of the revolution, the steamer *Ban-Righ* of said remembrance, the piratical history of which is well known. The wonderful campaign in which the present chief of the country destroyed and routed all the armies opposed to him by the revolution did not convince the company which I refer to of the downfall of its aspirations, nor did it desist from its purposes, since, after the famous battle of La Victoria, it insisted on helping Matos, prolonging by this means an iniquitous war, already unaccountable which aggravated the evils of the country, putting it exhausted and defenseless, as it was, under the pressure of foreigners. The evidence of all the foregoing facts I shall produce in full in due time. Besides the Venezuelan blood wasted, of inestimable value, the credit and good name of the country, a good deal injured in consequence of the war and the enormous amounts which had to be spent by the Government to put it down, the "Liberating" revolution caused the national treasury great damages, as it is easy to imagine and as I shall prove in the course of the litigation, damages for which the New York and Bermudez Company is responsible by having, through its directors in the United States and its agents in Venezuela, supplied funds and material as well as moral support from the beginning to the end of the struggle.

From the foregoing it is concluded: That the above-mentioned company has caused the nation such damages as narrated, under all legislations of civilized countries and as provided by our own law as per article 1122 of the civil code in force. Wherefore I am instructed by the Executive to demand, as I hereby demand in all legal form of the New York and Bermudez Company, a corporation domiciled in Philadelphia, United States of America, and also in this city in the person of its representative, Mr. Robert Kemp Wright, of age and a resident here, that it agrees on the said company being bound to satisfy, and that it satisfies to the United States of Venezuela the serious damages caused by the assistance given to the late revolution called "Libertadora," which assistance, wrongful in every way, and the more so when it is considered that the company, being a foreign corporation, should have observed strict neutrality in connection with the internal politics of the country. For the purposes of jurisdiction only I value the present action over 4,000 bolivars; but I petition that the total amount of damages, motive of this action, should be decided upon by experts in accordance with the evidence which I shall supply in due legal course of time. In consequence thereof, I petition that this action, with the inclosed documents, be admitted, substantiating according to law, and ultimately declare it admissible

with costs and all other judgments. I also petition that the translations into the legal language from the English of the documents which I inclose herewith be ordered. It is justice, etc.

(Signed) F. ARROYO PAREJO.

Caracas, 22d of September, 1904.

The undersigned secretary certifies to the present copy.

Signed on 1 bolivar stamp.

VICENTE E. VELUTINI.

Hall of first instance, civil, of the western section of the federal district. Caracas, September 22, 1904. 94th and 46th.

Mr. Robert Kemp Wright, in his capacity as a representative of the New York and Bermudez Company, shall appear before this tribunal the tenth working day after cited at 10 o'clock a. m. to answer the foregoing. He shall give a receipt of this copy.

THOMAS GARBIRAS, *Judge*.

Cited the 22d September at 3 o'clock p. m.

ROBERT KEMP WRIGHT.

[Inclosure to No. 332.]

STATE OF NEW YORK, *County of New York, ss:*

O. E. Thurber, being duly sworn, deposes and says:

He is of lawful age and resides in the city of New York, State of New York, United States of America, and for the past seventeen years has been engaged in the asphalt business.

In the year 1901 he was the treasurer of the Barber Asphalt Paving Company, and prior to that time he had been treasurer of the New Trinidad Asphalt Company (Limited), and in these capacities he had cognizance of the business done and transactions made by the New York and Bermudez Company. In and during the year 1901 the National Asphalt Company, of which Francis V. Greene was the president, owned all or substantially all of the capital stock of the Asphalt Company of America, which latter company owned all of the capital stock of the Barber Asphalt Paving Company and of the New Trinidad Lake Asphalt Company (Limited). The said New Trinidad Lake Asphalt Company (Limited) owned all or substantially all of the capital stock of the New York and Bermudez Company. All of the business of the said New York and Bermudez Company was managed, controlled, and directed by the officers of the said National Asphalt Company.

Among the officers and directors of the said National Asphalt Company were Francis V. Greene, president; John M. Mack, vice-president; Arthur W. Sewall, secretary and treasurer; and Avery D. Andrews, director. The principal offices of the National Asphalt Company, of the New York and Bermudez Company, and of all the other companies heretofore mentioned were in the year 1901 located at No. 11 Broadway, in the city of New York, and all of said companies were to all intents and purposes one and the same corporation in respect to their management. Deponent's office was at the same place, and he was familiar with much of the business of the several companies controlled by the said National Asphalt Company and had ample opportunity to gain full knowledge thereof.

In the spring of the year 1901 deponent saw various persons at No. 11 Broadway, and among others some who were reported to deponent as coming from Venezuela. These Venezuelans were in consultation with Francis V. Greene on several occasions, and deponent has been informed and verily believes that one Gen. Manuel A. Matos was seen to visit said offices at No. 11 Broadway during the said spring or early summer of the year 1901. In the aforesaid summer of 1901 the said Greene departed for Europe, and thereafter letters and telegrams were received from him dated at London and Paris, and deponent verily believes said Greene to have been in said cities of London and Paris and elsewhere in Europe until the latter part of the month of October or the early part of the month of November of the said year 1901. During said summer of 1901 the aforesaid Avery D. Andrews questioned deponent as to the means of transmitting an unknown sum of money to Europe, and particularly requested deponent to ascertain the name of the correspondent or agent of the Credit Lyonnaise of Paris at New York, which deponent did.

In or about the month of September, 1901, deponent was upon one occasion called on the telephone by Stuart G. Nelson, vice-president of the Seaboard National Bank, in the city of New York, of which bank the aforesaid Francis V. Greene was at that time a director. Said Nelson stated to deponent that the said Seaboard National Bank had received from the Credit Lyonnaise and held for payment a certain draft

to the amount of one hundred thousand dollars ($100,000) drawn upon the New Trinidad Lake Asphalt Company (Limited), and requested that said draft be paid without delay. Deponent referred said Nelson to Ira Atkinson, who was at that time the treasurer of the said New Trinidad Lake Asphalt Company (Limited), and said Atkinson subsequently stated to deponent that he had received no advice regarding the said draft and knew of no liability of said company requiring payment of such sum by it, nor of any other reason why said company should pay the amount of $100,000 before mentioned. He referred the matter to the aforesaid Arthur W. Sewall, and accompanied said Sewall to the aforesaid national bank, where said Sewall and Nelson repaired to a private room, and after a conference said Sewall returned to said Atkinson and directed him to give a check for $100,000 to the order of Nicoll, Anable & Lindsay, who were at that time the attorneys for the New York and Bermudez Company, and said Sewall informed said Atkinson that said attorneys would thereupon pay the draft before mentioned, all of which was done. Said Atkinson subsequently informed deponent that he was further directed to charge the sum of $100,000 thus paid out to the account of the New York and Bermudez Company and to instruct Frederick J. Baxton, at that time treasurer of the New York and Bermudez Company, to charge said sum on the books of the said New York and Bermudez Company to an account styled "Government relations." Said Atkinson subsequently stated to deponent that another draft for $30,000 was paid and charged in the same manner, and that he received no papers or vouchers therefor beyond receipts signed by Nicoll, Anable & Lindsay, or initialed N., A. & L. by the aforesaid Avery D. Andrews, and that said drafts and other papers relating to said payments were all retained by and in the custody of said Nicoll, Anable & Lindsay.

Deponent was further informed by Thomas H. Thomas, the president, and by Frederick J. Buxton, the treasurer, of the New York and Bermudez Company, and by John K. Breeden and Charles Y. Baldwin, bookkeepers for the New Trinidad Lake Asphalt Company (Limited) and for the New York and Bermudez Company, that the payment of the drafts before mentioned for $100,000 and for $30,000 were charged to the account called "Government relations," all as stated to deponent by said Atkinson. Said Atkinson, Thomas, Buxton, Breeden, and Baldwin further informed deponent that thereafter other payments of varying amounts were made by or on account of the New York and Bermudez Company through said Nicoll, Anable & Lindsay for purposes not disclosed to said informants and that said payments were likewise charged to the account called "Government relations." Said Atkinson, Thomas, Buxton, Breeden, and Baldwin further informed deponent that from information received they were convinced that such payments were made for the purpose of assisting the revolution then in progress against the constituted Government of Venezuela, the leader of said revolution being the aforesaid Gen. Manuel A. Matos; and said Baldwin further informed deponent that upon one occasion a messenger from the office of said Nicoll, Anable & Lindsay brought to the office of the National Asphalt Company before mentioned, at No. 11 Broadway, a slip of paper upon which was written the following: "Revolutionists, five thousand dollars;" and thereupon a check of the said New York and Bermudez Company for the sum of $5,000 was drawn to the order of and sent to said Nicoll, Anable & Lindsay, and said sum of $5,000 was charged on the books of said New York and Bermudez Company to the aforesaid account called "Government relations."

On the 14th and 15th days of the month of March, 1901, deponent had conversations with one Gilbert M. Furman, of the city of Plainfield, State of New Jersey, United States of America, at No. 17 Battery place, in the city of New York, and said Furman informed deponent that in or about the month of May, 1901, he was ordered by said Greene, Andrews, Mack, and Sewall to proceed to the city of Caracas, United States of Venezuela, for the purpose of investigating the status of the aforesaid revolution, to ascertain the probability of the success thereof, and to make a full report thereof to said officers of the said National Asphalt Company; and particularly to report upon the advisability of the said New York and Bermudez Company making an alliance with said Matos by contributing a large sum of money to him to be used in assisting and promoting the said revolution. Said Furman further informed said deponent that he carried out the instructions of said officers of said National Asphalt Company, negotiating and actively treating with agents and associates of the said Matos, and said agents and associates were frequent visitors at Bean's residence at Caracas. Said Furman further stated to deponent that he became much alarmed at the open manner in which said Bean was negotiating with the agents of said Matos, and advised said Bean to be more discreet in his negotiations. Said Furman further stated to deponent that he made a thorough investigation of political affairs in Caracas, and particularly concerning the probability of the revolution aforesaid resulting successfully to the Matos party, and that he, the said Furman, having formed the

opinion that the Matos revolution would triumph, returned to New York and reported to said Greene, Mack, Andrews, and Sewall to that effect, and recommended that the New York and Bermudez Company should contribute a large sum of money to Matos for the purpose of carrying on the revolution; and said Furman also stated to deponent that said Greene, Mack, Andrews, and Sewall thereupon decided to act in accordance with the said Furman's recommendations, and the said Greene was designated to proceed to Paris and to meet said Matos, and to carry out the arrangements made with him.

Deponent further says that his attorney, William Young Kinleyside, of Edinburgh, Scotland, in the month of February, 1904, made investigations in Glasgow, Aberdeen, and London regarding the sale of a certain steam vessel called *Banrigh*, and said attorney reported to deponent that he had ascertained that said vessel was sold by the Aberdeen Steam Navigation Company in or about the month of September, 1901, to Rudolph De Paula and M. A. Matos for the sum of nineteen thousand pounds sterling, and that in the course of the negotiations for the sale and purchase of the vessel, the said sellers thereof, the Aberdeen Steam Navigation Company, met Greene.

Deponent further states that the aforesaid Charles Y. Baldwin, on the 19th day of March, 1904, at No. 17 Battery place, in the city of New York, did say to deponent that he saw the aforesaid Gen. Manuel A. Matos at No. 11 Broadway, in the city of New York, during the summer of 1901; that he, the said Baldwin, at the time was in the company of one Michael N. Schweizer, who had lately returned from Carcas, where he, the said Schweizer, had been employed as secretary for Henry Willard Bean, the aforesaid. The said Schweizer stated to the said Baldwin that he was well acquainted with the said Matos, and that he was further familiar with the negotiations with him. Deponent further states that he was further informed by said Baldwin that one Francis M. Cartland, now in the city of New York, was during the latter part of the year 1901 in Caracas, as secretary and clerk for one J. Lewis Rake, who succeeded the aforesaid Henry W. Bean as the representative of the New York and Bermudez Company in Caracas, and that said Cartland was well informed concerning the connection of the New York and Bermudez Company with the revolution of said Matos.

Deponent further says that said Baldwin further informed him that one F. A. Holmes, now employed by the General Asphalt Company, the successor of said National Asphalt Company, was also in Caracas following the departure of said Cartland, and said Holmes was the secretary for one William J. Ewart, who succeeded the aforesaid J. Lewis Rake as the representative of the New York and Bermudez Company in Caracas. Said Baldwin further informed deponent that he had several conversations with said Holmes, and that said Holmes was well informed concerning the connection of the New York and Bermudez Company with the aforesaid revolution; and that said Holmes, as secretary for said Ewart in Caracas, wrote many and voluminous letters addressed to the officers of the National Asphalt Company, reporting to said officers all information gained by said Ewart concerning the progress and probabilities of success or failure of the aforesaid revolution against the Government of Venezuela, and advising said officers fully as to all that pertained thereto.

Deponent further says that he is acquainted with one Charles C. Link, of the city of New York, and that in the years 1901 and 1902 said Link was a clerk for the said National Asphalt Company, and for the other companies by it controlled, and among other duties said Link had charge of receiving and sending all telegraphic messages in the secret cipher code used by said companies. Said Link has informed this deponent that many messages were received from the aforesaid Francis V. Greene, dated at London and Paris, during the late summer and early autumn of 1901, and also from the representatives of said company at Caracas, and that many of said messages were extracted from the files of said companies by the aforesaid Avery D. Andrews, and retained in his possession. Said Link further informed the deponent that among said messages he distinctly remembers one from Caracas asking for arms, ammunition, and money for the purpose of overthrowing the then constituted Government of Venezuela.

From all the information received by this deponent he verily believes that the aforesaid officers of the National Asphalt Company and of the other companies by it controlled did conspire to foment, aid, and assist the revolution against the constituted Government of Venezuela in the years 1901 and 1902, and that they did aid and assist said revolution by the contribution of large sums of money for the purchase of the steam vessel called the *Banrigh*, for the purchase of arms, ammunition, and equipment for said vessel, and for the purchase of other supplies for the equipment and sustenance of the revolutionary forces commanded by the aforesaid Gen. Manuel A. Matos.

Deponent further says that on account of the secrecy with which said assistance was contributed to said Matos, and on account of the efforts made by said officers of the

National Asphalt Company to suppress and hide all documentary and other evidence showing the connection of said company with said revolution, it has been very difficult to secure direct evidence of said complicity, but deponent is informed and verily believes that each and every one of the foregoing statements by him made is true, and that an examination of the persons below named, under due process of law, will fully corroborate said statements, and will disclose the assistance given by said National Asphalt Company, and by said New York and Bermudez Company to said Matos revolution:

Francis V. Greene, John M. Mack, Avery D. Andrews, Arthur W. Sewall, George W. Elkins, Gilbert M. Furman, J. Lewis Rake, William J. Ewart, Thomas H. Thomas, Ira Atkinson, Frederick J. Buxton, John K. Breeden, Charles Y. Baldwin, George C. Link, Michael N. Schweizer, Francis M. Cartland, F. A. Holmes, Henry Willard Bean, officers of the Aberdeen Steam Navigation Company, London; William Young Kinleyside, attorney at law, Edinburgh, Scotland; officers of the Credit Lyonnaise; Stuart G. Nelson, vice-president Seaboard National Bank; —— Carnegie, ship broker, No. 11 Great street, Helens, London, England; J. M. Soper, yacht broker, 184 Piccadilly, London, England.

And further deponent saith not.

ORRAY E. THURBER.

Subscribed and sworn to before me this 17th day of June, 1904.

DAVID FISCHER,
Notary Public.

[Inclosure to No. 332.]

I, William Young Kinleyside, of No. 7 George street, Edinburgh, Scotland, a solicitor and practicing before the supreme and inferior courts of Scotland, make oath and say as follows:

(1) I have during the last few months been making investigations as to the purchase of a ship formerly known as and named the *Benrigh*.

(2) From information received I find that it formerly belonged to the Aberdeen Steamship Company, and that it was a boat of 600 tons.

(3) The ship was purchased in London about the end of the year 1901 and was sent to Newcastle to be fitted up as a gunboat.

(4) On arriving again in London it was seized by the English authorities, and after a while was allowed to leave port. At that time it was known that the boat had been bought and fitted up as a gunboat to assist the revolutionists in Venezuela.

(5) The name of the boat was changed several times and transferred at sea in order to hide its identity, and as last in the ship register as named the *Libertador*.

(6) From inquiries made the history of the purchase of the boat is shortly as follows: A Mr. Willis called upon Mr. Soper, yacht broker, No. 184 Piccadilly, London, with a view to purchasing a boat of very strong build.

(7) At an interview had with Mr. Soper he informed me that he explained to Mr. Willis that he had only some yachts for sale and that his connection with Mr. Willis then terminated.

(8) Afterwards it was ascertained that Messrs. Raison & Co., of Leadenhall street, now at No. 21 Great St. Helens, had for sale a boat which might be suitable for the proposed purchasers.

(9) I had an interview with Mr. Raison, and he stated that he had acted in the matter and showed me a photograph of the boat, and stated that he presently had the boat for sale; he handed me printed particulars giving full information regarding the ship.

(10) He informed me that the purchaser was Mr. Matos, who was organizing and taking a leading part in the revolution. He stated that there was a great deal of mystery as to who was financing the purchase, but that a Mr. Greene had something to do with it and that the money was being provided from sources in America. He would give no further information, which showed that he had instructions to that effect from some source or other.

(11) I have also called and interviewed Mr. A. Carnegie, ship broker, formerly at No. 1 St. Helens place, and now at St. Mary Chamber, St. Mary Axe, London. I was accompanied by Mr. Joel Henry Benedictus, Mansion House Chambers, No. 20 Bucklersbury, London. Mr. Carnegie then stated that he had acted for Mr. Matos in the purchase of the boat and that the price paid was £20,000.

(12) He informed me that his instructions were received from Mr. Matos and that the money was paid at once.

(13) He stated that he did not know where the money came from, but no doubt Mr. Matos was assisted from an outside source.

(14) His opinion was now that the boat had been sold by Mr. Matos to the Colombian Government and he thought it was now at Trinidad.

WILLIAM YOUNG KINLEYSIDE.

Sworn to at 20 Bucklersbury, in the city of London, this 23d day of June, 1904, before me.

L. M. BIEDEN, *Commissioner for Oaths.*

Resworn at 75 and 77 Cornhill, London, this 23d day of June, 1904, before me.

ALEXANDER RIDGWAY, *Notary.*

[Inclosure to No. 332.]

STATE OF NEW YORK, *County of New York, ss:*

Amzi Lorenzo Barber, being duly sworn, deposes and says: That he resides in the city of Washington, United States of America, and for upward of twenty-five years has been engaged in the asphalt business; he was formerly, from about the 10th day of September, 1900, until the 3d day of January, 1901, president of the National Asphalt Company, and was familiar with all the operations of the said company and of all the companies controlled by it, including the New Trinidad Lake Asphalt Company (Limited) and the New York and Bermudez Company. On the said 3d day of January, 1901, deponent resigned the office of president of the aforesaid National Asphalt Company, and thereafter sold all the stock and other securities of said company, and all the companies controlled by it, which deponent then owned, and he has not since owned and does not now own any interest whatever in the National Asphalt Company, or by its successor, the General Asphalt Company.

Deponent has read a certain affidavit made and signed by Orray E. Thurber before David Fischer, a notary public in and for the county of New York, dated the 17th day of June, 1904, copy of which is hereto annexed, marked "Exhibit A," and is acquainted with many of the facts therein stated, and such facts are true; and as to the remainder of the facts therein stated, from information received deponent believes them to be true.

Deponent further says that he was present at No. 17 Battery place, in the city of New York, on the 15th day of March, 1904, at an interview between the aforesaid Orray E. Thurber and one Gilbert M. Furman, and that said Furman did make each and every statement as narrated in the affidavit of said Thurber and did make same statements to this deponent.

Deponent further says that on the 14th of April, 1904, at a clubhouse of the New York Yacht Club, in the city of New York, he met one George W. Elkins, who had long been associated with this deponent in the asphalt industry, and said Elkins, during the year 1901, was one of the directors of the National Asphalt Company and also a director of the New York and Bermudez Company. Deponent inquired of said Elkins if he knew anything about the assistance given by the said New York and Bermudez Company to the revolution against the Government of Venezuela in the year 1901, known as "the Matos revolution," and said Elkins replied that he did know about it, and that Avery D. Andrews (formerly a director of the National Asphalt Company and now vice-president of the General Asphalt Company, and of the New York and Bermudez Company) in the summer of 1901 came to the place where said Elkins was staying on the St. Lawrence River to consult said Elkins with reference to supporting the revolution of said Matos, and that the New York and Bermudez Company did assist the revolution of said Matos.

Deponent further says that he is familiar with the investigations made by the aforesaid O. E. Thurber concerning the complicity of the New York and Bermudez Company with the Matos revolution, and from information received he believes all the statements to be true, and that the said New York and Bermudez Company did, in the years 1901 and 1902, foment, aid, and assist the aforesaid Matos in his rebellion against the then constituted Government of Venezuela by contributing to him large sums of money for the purchase of the steam vessel *Banrigh*, for the purchase of armament for said vessel, and for the purchase of arms and ammunition and sustenance for the use of the revolutionary forces of said Matos, and by other means, and further deponent says not.

A. L. BARBER.
AMZI LORENZO BARBER.

Subscribed and sworn to before me this 2d day of July, 1904.

DAVID FISCHER,
Notary Public No. 30.

[Inclosure to No. 332.]

STATE OF NEW YORK, *County of New York, ss:*

Amzi Lorenzo Barber, being duly sworn, deposes and says: That he resides in the city of Washington, United States of America, and for upward of twenty-five years has been engaged in the asphalt business; he was formerly, from about the 10th day of September, 1900, until the 3d day of January, 1901, president of the National Asphalt Company, and was familiar with all the operations of said company, and of all the companies controlled by it, including the New Trinidad Lake Asphalt Company (Limited), and the New York and Bermudez Company. On the said 3d day of January, 1901, deponent resigned the office of president of the aforesaid National Asphalt Company, and thereafter sold all the stock and other securities of said comcompany and of all companies controlled by it which deponent owned, and he has not since owned and does not now own any interest whatever in the National Asphalt Company, nor in any corporation owned or controlled by said National Asphalt Company, or by its successor the General Asphalt Company.

Deponent is informed and verily believes that subsequent to his resignation as the president of the National Asphalt Company—that is to say, during the years 1901 and 1902—certain officers of the said National Asphalt Company, of the New Trinidad Lake Asphalt Company (Limited), and of the New York and Bermudez Company did contribute on behalf of said company large sums of money to one Gen. Manuel A. Matos, or to his associates, for the purpose of fomenting, aiding, and abetting a revolution against the constituted Government of the United States of Venezuela, and to that end did furnish them money to purchase, arm, and equip a steamship called *Banrigh*, and did furnish money to said Matos or to his associates for the purpose of purchasing a large quantity of arms and ammunition which were conveyed by said steamship *Banrigh* to the adherents of said Matos at various points in the United States of Venezuela.

Deponent further says that he was present at No. 17 Battery place, in the city of New York, on the 15th day of March, 1904, and had a conversation with one G. M. Furman, now residing in the city of Plainfield, State of New Jersey, United States of America. Said Furman informed this deponent that in or about the month of May, 1901, he was directed by certain officials of the said National Asphalt Company to proceed to the city of Caracas, Venezuela, for the purpose of making an investigation of the political conditions there existing, and particularly to make a full report to the officers of the said National Asphalt Company upon the advisability of the New York and Bermudez Company, one of the subsidiary companies of the said National Asphalt Company, assisting in the revolutionary movement headed by the aforesaid Matos by contributing large sums of money to said Matos or to his associates.

Said Furman informed this deponent that he proceeded to Caracas as directed, and there found a representative of the said New York and Bermudez Company, one Henry Willard Bean, actively engaged treating with the agents and adherents of said Matos, who were frequent visitors at Bean's residence in said city of Caracas. Said Furman reported to this deponent that he was much alarmed at the openness with which said Bean was negotiating with said agents and said adherents of said Matos, and recommended that he, the said Bean, should exercise discretion in his negotiations with them. Said Furman further stated to this deponent that after making a thorough investigation of the political affairs in Caracas, and particularly of the probable success of the revolutionary movement headed by the said Matos, he became convinced that the constituted Government of Venezuela would be overthrown, and that the Matos revolution would triumph, provided sufficient money should be furnished to said Matos to carry on his operations. Said Furman then stated that he returned to New York and reported his conclusions to Francis V. Greene, the president; John M. Mack, the vice-president; Avery D. Andrews, general counsel, and Arthur W. Sewall, secretary and treasurer of the aforesaid National Asphalt Company, and recommended that the National Asphalt Company or its subsidiary company, the New York and Bermudez Company, should contribute a large sum of money to said Matos for the purpose of assisting the revolution already referred to; and said Furman further stated to this deponent that said Greene, Andrews, Mack, and Sewall thereupon decided to act in accordance with said Furman's recommendations, and that said Greene was designated to proceed to Paris to arrange matters with said Matos.

Deponent further says that on the 14th day of April, 1904, at a clubhouse of the New York Yacht Club, in the city of New York, he met one George W. Elkins, who had long been associated with this deponent in the asphalt industry, and said Elkins, during the year 1901, was one of the directors of the National Asphalt Company and also a director of the New York and Bermudez Company. Deponent inquired of said Elkins if he knew anything about the assistance given by the said New York and Ber-

mudez Company to the revolution against the Government of Venezuela in the year 1901, known as the "Matos revolution," and said Elkins replied that he did know about it, and that Avery D. Andrews (formerly a director of the National Asphalt Company and now vice-president of the General Asphalt Company and of the New York and Bermudez Company) in the summer of 1901 came to the place where said Elkins was staying on the St. Lawrence River to consult said Elkins with reference to supporting the revolution of said Matos, and that the New York and Bermudez Company did assist the revolution of said Matos.

Deponent further says that on or about the 20th day of June, in the year 1904, at 17 Battery place, in the city of New York, he had an interview with Thomas H. Thomas, who, in the year 1901, was the nominal head of the New York and Bermudez Company. Said Thomas informed this deponent that during the year 1901 all considerations as to the conduct of the business of the New York and Bermudez Company were received by him from the aforesaid the National Asphalt Company; that during the month of November, 1901, he, the said Thomas, was asked to pay a large sum of money to the firm of Nicoll, Anable & Lindsay, of the city of New York, who were at that time the attorneys for the said New York and Bermudez Company; said Thomas further informed this deponent that although he inquired of said Andrews the purpose for which the money was to be paid, all information upon the subject was refused. Said Thomas then stated that he declined to make payment without further authority, and that thereupon he received a slip of paper upon which was written the following: "18th of November, 1901. N. Y. & B. Co. to Nicoll, Anable and Lindsay, $101,366.67. Signed A. D. A. and A. W. Sewall." Said Thomas thereupon exhibited to this deponent the original slip of paper which he received and which he had retained in his possession. Deponent is familiar with the handwriting of Avery D. Andrews and Arthur W. Sewall, and he verily believes that the initials A. D. A. and the name A. W. Sewall appearing on the slip of paper in possession of said Thomas are in the true handwriting of A. D. Andrews and Arthur W. Sewall, respectively.

Deponent further says that he is acquainted with one Walter M. Dick, residing in the city of Pittsburg, State of Pennsylvania, United States of America; that in the year 1901 said Dick was in the employ of the New Trinidad Lake Asphalt Company (Limited) and of the New York and Bermudez Company, and was stationed at the Port of Spain, in the island of Trinidad, and at Guanoco, in the State of Bermudez, Venezuela. Said Dick has informed this deponent that during the years 1901 and 1902 the said New York and Bermudez Company furnished forage and supplies and transportation at various sundry times to the revolutionary forces of said Matos in the aforesaid State of Bermudez.

AMZI LORENZO BARBER.

Subscribed and sworn to before me this 8th day of July, 1904.

DAVID FISCHER, *Notary Public, No. 30.*

[Inclosure to No. 332.]

Charles Y. Baldwin, being duly sworn, deposes and says that he is of lawful age and resides in the city of New York, State of New York, United States of America; that during the years 1901 and 1902 he was employed by the New Trinidad Lake Asphalt Company (Limited) and was familiar with its accounts and business, and that said company owned substantially all of the capital stock of the New York and Bermudez Company.

Deponent further says that during the year 1901 and subsequently large sums of money were paid to Nicoll, Anable & Lindsay, attorneys for said New York and Bermudez Company, and deponent was informed and verily believes that said money or a large part thereof was expended in promoting and aiding a revolutionary movement, headed by one Manuel A. Matos, against the constituted government of Venezuela. Said expenditures, whether made by the aforesaid the New Trinidad Lake Asphalt Company (Limited) or by said New York and Bermudez Company, to the best of deponent's knowledge and belief were charged on the books of the last-named company to an account styled "Government relations." Deponent further says that during the latter part of 1901 or early in 1902 a representative of said New York and Bermudez Company in Caracas, one William J. Ewart, wrote voluminous and detailed letters to the officers of the National Asphalt Company in New York City, setting forth with great minuteness all the particulars of the aforesaid revolution, its progress and probability of success, and manifesting unusual interest therein, said letters constituting the daily account of all matters pertaining thereto, and said letters were carefully guarded by the officers of said National Asphalt Company at its

home office in the city of New York. Deponent further says that on one occasion, in the summer of 1901, he was in company with one Michael N. Schweizer at No. 11 Broadway, where were located the offices of said National Asphalt Company, the said the New Trinidad Lake Asphalt Company (Limited), and the said New York and Bermudez Company, and there said Schweizer pointed out to deponent a man who, said Schweizer stated, was Gen. Manuel A. Matos, the leader of the revolution aforesaid. Said Schweizer had theretofore been a clerk for one Henry Willard Bean in the city of Caracas, and had lately returned to New York, and represented to this deponent that he well knew said Matos, having often seen him in Caracas and having also been a fellow-passenger with him on a steamer between Caracas and New York.

Deponent was informed and verily believes that upon one occasion a messenger, purporting to come from the offices of the aforesaid Nicoll, Anable & Lindsay, called at the offices of the aforesaid asphalt companies at No. 11 Broadway, in the city of New York, bearing a paper upon which was written the following: "Revolutionists five thousand dollars," and thereupon, to the best of deponent's knowledge and belief, a check was issued for the sum of $5,000, payable to the order of said Nicoll, Anable & Lindsay.

Deponent further says that as to the facts stated herein, upon personal knowledge the same are true and as to the statements made upon information obtained he believes them to be true; and further deponent says not.

CHARLES Y. BALDWIN.

Subscribed and sworn to before me this 8th day of July, 1904.

JOSEPH F. MCLAUGHLIN,
Notary Public No. 70, New York County.

Mr. Hutchinson to Mr. Hay.

No. 341.] AMERICAN LEGATION,
Caracas, October 14, 1904.

SIR: I have the honor to inform the Department that, in a letter dated the 7th instant, Mr. Wright, the managing director of the New York and Bermudez Company, informed me that the judge of first instance of the federal and cassation court had delivered a decision against said company, thus confirming the action of the Venezuelan Government in taking the property of the said company. (Copy of Mr. Wright's letter inclosed.)

I had already learned from the British minister of the decision, as Mr. Wright had informed him some days previously, his letter to me having gone astray.

The arguments in the case was concluded on Monday, October 3, the judge reserving decision, as he is allowed three days in which to render his judgments. On the 4th, however, early in the morning, he gave his decision against the company, and he could hardly have been expected to have done otherwise, considering his previous connection with the case, for I believe it was he who gave the order for sequestration.

The company have entered their appeal, which will be acted upon in due course, and reported to the Department.

Day before yesterday Mr. Wright sent me the decision of the judge, appearing in the Official Gazette (copy and translation inclosed).

Mr. Wright in his letter to me (copy inclosed) points out the fact that the judge bases his decision in the paragraph following the last "whereas" (see inclosure No. 2) on very extraordinary grounds. He says the company have failed to prove that the Hamilton concession is not a lease, thus ignoring the fact that, the Government being the plaintiff, the burden of proof is upon it to prove the contrary. He

also ignores the fact that if the instrument in question is really a lease, then no amount of argument can change its character.

The greatest weakness in the learned judge's decision seems to me to be his omission, probably intended, of reference to the papers giving the company full proprietary rights in Guanoco, and I understand the company is always making this their strong point. The Department probably has in its possession copies of the definitive title to the mines, which was signed by the former President of Venezuela, with the consent of Congress.

The influences of the President of the Republic in the judicial decisions of the country seems only too evident.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure to No. 341.]

Mr. Wright to Mr. Hutchinson.

CARACAS, *October 7, 1904.*

DEAR SIR: I beg to inform you that on Saturday, October 1, argument was begun before the judge of first instance of the federal and cassation court on the question of the validity of the sequestration previously decreed in the suit against the New York and Bermudez Company for the cancellation of the Hamilton contract. The argument was concluded on Monday, October 3, the judge reserving decision. He is allowed three days in which to deliberate before rendering his decision. His decision was rendered early the following morning and was against the company, confirming the sequestration.

We have entered an appeal, which will be acted upon in due course, and will advise you further at a later date.

I am, etc., ROBERT K. WRIGHT.

[Inclosure to No. 341.]

Federal and cassation court, hall of first instance, Caracas, October 4, 1904. 94th and 46th.

Inasmuch as the court has heard the oral addresses and seen the written conclusions of the parties—

On the 20th day of July, 1904, the attorney-general of the nation brought an action against the New York and Bermudez Company, based on section 7 of article 373 of the code of civil procedure, and petitioned in his conclusions that the mine that said company exploits in a place called Guanoco, with all the machinery and accessories for the exploitation of same, should be sequestrated. Cognizance having been taken of this petition, and the proof on which it was founded having been examined, the court, finding that all the requirements of law have been complied with, decided on July 21, 1904, to agree with the terms of the petition, commissioning the judge of first instance in civil causes of Cumana to effect the sequestration, appointing at the same time Mr. Ambrose H. Carner depositary. The defendant petitioned on the 22d of July that the order be revoked, but the court decided against it on the 25th of the same month on the ground that the motives on which such decision was founded subsisted. The court being informed by the return of the dispatch with inclosures, the 16th of September last, that the commission given to the judge of the section of Cumana had been fulfilled, the parties were informed by notification given and received by them the same day. In the third sitting, as per article 378 of the code of civil procedure, for answering the sequestration proceedings, the defendant appeared before the court, and Mr. Robert K. Wright, assisted by Doctor Bance, filed an instrument in writing on one sheet opposing the action of sequestration, and reproducing the petition of July 22, 1904, which he wanted to be read and held as forming one part of his answer.

The court declared the case open for evidence, and the attorney-general of the nation on the 22d of September produced the following: Ratification of depositions on which his petition for the sequestration was based; a copy, No. 9075, of the Official

Gazette containing the decisión given by the hall of sole instance in the litigation between Patrick R. Quinlan and Charles M. Warner against the New York and Bermudez Company; a certificate issued by the accountant of the hall of examination proving that the company has been paying into the national treasury for asphalt exported, and obtaining at the same time exemptions of duties on building materials, machinery, utensils, and accessories imported; and that Doctor Bance, the constituted attorney of the company, should be examined after being duly sworn. Drs. Manuel A. Ponce and Tomás C. Llamozas ratified their former depositions, the latter being cross-examined, and Doctor Bance also. These proceedings over the case were read, and oral addresses having been called for, both parties appeared, the attorney-general of the nation filing his in writing in six folios of paper and petitioned that the Official Gazette containing the Hamilton concession on the main record should be taken into account. Doctor Bance, after some oral explanations contradicting the plaintiff's address, handed over to the court his written conclusions in four folios, and a copy of the Official Gazette, No. 3000. The parties requested that time should be given them to reply, which was accorded by the court, and both parties presented what they considered most expedient in the defense of their respective rights.

After the foregoing explanation the court has to judge on the incident debated and to discern the judicial points whereon to base its decision; and

Whereas if it is true that to determine the nature of some conventions the will of both parties and the interpretation given by them to it should be taken into account, such a principle can not be admitted to the extent that conventions subject to certain legal proceedings should lose the character given to them by law, since this would go against the law itself as well as against the views of legislators and fundamental principles.

Whereas that, taking into consideration the nature of the contract which is being debated and the capacity as an administrator only in which the National Government could have agreed to it, it results that said contract is classed by the law itself among those of limited duration, of a burdensome nature, and a fixed price is therein stipulated.

Whereas that to discuss the nature of the contract in judging on the sequestration is not to prejudge the main subject in this litigation—that is to say, whether the same should be annulled or not—one point which has not yet been properly discussed and out of which the court will get its conviction when it will decide.

Whereas in the course of the proceedings the defendants have not produced any evidence in their favor, therefore the reasons on which the court ordered the sequestration remains in force.

In consideration whereof, administering justice in the name of the United States of Venezuela, and by authority of law, the decree of sequestration given the 21st of July of the present year is hereby confirmed without any special order as to costs. Let it be published, registered, and ultimately filed.

S. T. ARNAL.
JUVENAL ANZOLA, *Secretary*.

The PRESIDENT.

[Inclosure to No. 341.]

Mr. Wright to Mr. Hutchinson.

CARACAS, *October 12, 1904*.

DEAR SIR: I beg to inclose herewith two copies of the Official Gazette of October 7, 1904, No. 9277, containing the report of the decision of the judge of the hall of the first instance of the federal and cassation court confirming the decree of sequestration of this company's property in Guanoco, together with two copies of translation of same. You will notice from the last "whereas" that it is based apparently on the fact that this company has not proved that the Hamilton concession is not a lease, entirely ignoring the fact that, the Government being the plaintiff, the burden of proof is on it to show affirmatively that the concession in question is not a lease, and also ignoring the fact that the instrument must speak for itself; and, if the instrument is a lease, no amount of argument on the part of the defense could possibly change its character. These facts have been entirely ignored in this decision, and the company has appealed to the full court.

I am, etc., ROBERT K. WRIGHT.

Mr. Hutchinson to Mr. Hay.

No. 349.] AMERICAN LEGATION,
Caracas, October 29, 1904.

SIR: I have the honor to acknowledge the receipt of the Department's No. 222, of September 26, 1904, relating to the case of the New York and Bermudez Company, and reiterating the request of the United States Government to that of Venezuela to restore the said company's property to it, pending proper legal settlement, and instructing me to read the dispatch to the minister of foreign relations and to leave with him a copy of it.

In accordance with the Department's instructions, I have the honor to report that I called on Señor Gustavo J. Sanabria, minister of foreign relations, on Wednesday, the 19th instant, at 10 a. m., and remained with him an hour. I began by reading the dispatch to him, but as he could get the meaning better by reading aloud to himself, he did so, I explaining from time to time the meaning of certain words and sentences and pointing out the importance of certain paragraphs. The minister is a good English scholar, and I feel sure that he got the import of the dispatch perfectly well.

In the first place he denied the company's titles to the property, and said the Hamilton concession is still the only instrument in force, and that, by its terms, prevents any definite titles being given to the property in dispute. I simply replied that the company possessed titles signed by the highest authorities of the country.

As this had not strictly to do with the request for the restoration of the property, we turned to the matter of the seizure. He plainly and most forcibly declared that the taking possession was in full accord with the Venezuelan laws, and that there were "extraordinary circumstances" for so doing, the charge of "noncanalization" being only one of many complaints against the company; so, therefore, the seizure, as a "precautionary measure," was correct, the precaution being necessary from the fact that the company could have transferred the property into other hands, or in some way got rid of it. If Venezuela is wrong, he said, in seizing the property in this manner the company, if winning the suit, will be able to obtain damages hereafter.

As to the company's not having had time to show cause why its property should not have been taken from it, he said it had had time and had put in its papers. I reminded him that the "receiver" had already gone to the asphalt lake to take possession, so what the company was able to do after his departure amounted to nothing, so far as preventing sequestration was concerned. He then said the code gave the right to appoint a receiver anyway, and what had been done was perfectly legal.

Señor Sanabria said he thought our Government had only had good opportunities for knowing one side of the case and that he had quoted the articles and sections of the code which plainly upheld the act of sequestration in his note of August 6, 1904, to Mr. Bowen.

I replied that our Government undoubtedly would not ask what it was asking of the Venezuelan Government without first having considered all the important documents in the case, the company's title deeds, and the codes of Venezuela especially. I explained to him that Judge Penfield was the legal adviser of the Department, and had

no connection with the New York and Bermudez Company, nor any interest in the case except to arrive at the truth. I suggested, however, that he write out, for the next mail, October 31, a full statement as a reply to the Department's dispatch. By so doing the Government of the United States might be better able to understand the position he is assuming in the case and how he reconciles himself to the unusual proceedings of the seizure. He said he would certainly do as I suggested and have his reply ready for the mail.

I pointed out to him, as related in the Department's dispatch, the peculiar and secret manner of exploiting asphalt from the company's property before the case has been decided by the courts. He replied that he knew nothing about the sending away of asphalt on chartered ships except what he had casually noted in the newspapers; but, possibly, if this were true, it had been done for the purpose of getting sufficient funds to keep the property in repairs. (This fact seems to worry him somewhat, however.) I reiterated that this was hardly a proper and legal thing to do to the extent it was being done, and that it lent an unpleasant color to the whole matter of the seizure.

As regards the soldiers who had been sent down, he did not deny they were sent, as he did once to Mr. Bowen, but said they were necessary, as the men employed by the company are mostly colored and very rough and lawless by nature, and as police do not exist at Guanoco the receiver required the security of his person and the fulfillment of his duty to take over the property without loss of time or possible contention.

As Señor Sanabria seemed earnestly to believe that his Government had acted in accord with the Venezuelan codes, I did not discuss the point with him, but said it seemed to me the manner in which his Government had acted was, if legal, at least most unusual and peculiar, and that he must see that each reiteration of the request for restoration by the Government of the United States was becoming stronger, and clearly something must be done—either the company's property restored pending a proper decision by the tribunals or a satisfactory proof that his Government has proceeded absolutely fairly and legally in the matter of the sequestration.

I thereupon handed the minister a copy of the Department's dispatch, as instructed, and this ended the audience, which had been perfectly open and cordial in every way. The minister, I may add, is a good friend of myself and family, and it happens that I am renting our house here from his mother, so I have seen him often.

It seems evident to me that the Venezuelan Government will try to keep the company's property as long as possible, if not for good, and ship away as much asphalt as it can. Captain Wright, the company's manager here, tells me it is possible to ship enough Bermudez asphalt away in a few months to pave the entire city of New York.

As regards Señor Sanabria, apart from his Government, I think he sees clearly that his Government is going too far, but he is afraid to counsel the President to do otherwise than is being done, and he is afraid to resign, because there is now a minister who resigned who is passing his days in prison. Personally Señor Sanabria is a highly educated and polished gentleman, greatly liked by the foreign ministers, and pitied for his position and for the fact that he could not refuse his appointment nor, up to the present, resign.

As regards the Venezuelan Government as a whole (the President is the whole), I learn that General Castro has no intentions of backing down in the present controversy. It is not in his character to do so, and the late blockade of his coast resulted in such a manner as to leave him still the "unconquered." He believes he got rid of the fleet by his diplomacy. The newspapers are comparing him to Alexander the Great, Napoleon, and Washington, and good and prominent men have lent themselves or been officially advised to praise him in the public press.

On Friday, the 21st instant, I saw Señor Sanabria again, by special appointment, and handed to him some notes which I prepared for him (copy inclosed) to be read in conjunction with the Department's dispatch, a copy of which he has. These notes are short and clear in stating some of the principal arguments of the Department, supporting its request for restoration of the company's property, and I thought I would not be going beyond my instructions in presenting them. In these notes I have laid particular stress on the point which Señor Sanabria gives as the chief defense for the sequestration, i. e., article 373, section 7, of the Venezuelan code of procedure, permits sequestration in the case of leases only. (Copy and translation of article inclosed.) I have shown that as the company can not now be legally declared to possess a lease, and lease only, the law cited can not apply, and if the law does not apply, then the sequestration has been illegal.

President Castro returned to Caracas a few days ago, and soon after his arrival Señor Sanabria went to bed ill, at least reported ill, and since that time the minister of foreign relations has not been visible, though he has been signing notes to the British legation. No doubt Señor Sanabria's illness is due to the fact that he is afraid to present to the President or discuss with him the point to which the controversy over this case has arrived, and is, at the same time, ashamed to put his signature to further evasive notes to this legation.

At the German legation the other evening I had a talk with a brother-in-law of Señor Sanabria, and he said the minister had received an intimation from the President to hurry up and get well. The German minister tells a story he heard from a German subject, who heard it from the minister of public instruction at the Club Concordia three or four days ago. It appears that the said minister and the minister of foreign relations went to see the President on the day of his arrival in Caracas. Having lauded His Excellency for a time, they brought up the advisability of arranging the several important questions pending between the Government and the American and British legations. The President said he would arrange them, and the ministers were flattering themselves on success, when the President, who had suddenly sized up their attitude in the matter, thundered out, "Yes, I will arrange with these bad foreigners by giving them two kicks!" and he went through the motions.

On the evening of the 27th instant, while a guest of the Chilean minister at the opera, I was introduced to the President, and he was very courteous in his manner toward me. When asked by the Chilean minister how he had been since last in the capital, he replied: "I have been very well. It is only my creditors who have been bad [unwell]."

This afternoon the British minister, Mr. Bax-Ironside, told me that I would get a reply from the Venezuelan Government to the Department's dispatch this evening, and, in fact, the reply did come, and was of the nature described by the British minister, he having said that it would be unfavorable. This shows that Mr. Bax-Ironside keeps in very close touch with Señor Sanabria, and, indeed, he informed me that while he is away in Trinidad this coming month Sanabria will let him know if anything important arises here.

Señor Sanabria's reply (copy and translation inclosed) adds nothing new to his other replies and is evasive in character. It still reminds the United States Government that the courts of justice should not be interfered with, and carefully avoids making a systematic reply to the points made by Mr. Adee in favor of the restoration of the company's property. As Señor Sanabria says, the Executive has seen the copy of the Department's No. 222, and has instructed him to reply as he has done.

I can add nothing further in the present dispatch except to inclose a copy of a letter to the New York and Bermudez Company from their manager here, together with a notice from the director of the French Cable Company at Caracas, which informs Manager Wright that the Venezuelan Government is delaying his telegrams to his company. This is one more complaint against this Government, and as it has also to do with the unfair way in which the company have been treated from the beginning of the legal proceedings I have concluded it in this dispatch. Mr. Wright has not asked me to make any complaint to the authorities.

I have, etc. NORMAN HUTCHINSON.

[Inclosure to No. 349.]

NOTES.

1. It is said the appointment of a receiver has been made in strict accordance with the Venezuelan laws of procedure, and article 373, section 7, is cited as that part of the laws upon which the sequestration is founded.

This is correct, provided the company possesses only a lease; the article and section refer to leases only. But the judge of first instance has taken for granted that the company possesses a lease only. He can not take for granted that which forms a part of the questions at issue, and which according to the complaint must be argued. It must be established that the company has a lease only, without holding definite titles to the property sequestrated. The company have documents proving their definite titles, which are on record in Venezuela, and which have been put before the court. Until the present time the Hamilton concession was never before called a "lease," and surely the judge of first instance can have no legal right for taking for granted that it is a lease or that the company possesses only a lease. Therefore, as it has not been established by the courts that the company held a lease only, the article 373, section 7, can not apply, and if they can not apply, then the sequestration has not been legal.

2. It is said the failure to canalize the rivers is not the only complaint against the company.

It is, nevertheless, the only complaint that can be considered in the present proceedings as regards the matter of sequestration.

According to the laws, expert evidence is necessary to prove that the canalization has not been done. A technical commission is only at the present time about to be sent to report on the state of the rivers in question; therefore the charge of noncanalization should not have appeared in the complaint, as no evidence of the kind required by the code had been procured at the time the proceedings began.

Further, by Minister Pulido's decree of July 17, 1900, it was declared that the company had fulfilled up to date all the engagements and obligations of its contract. The decree did not call it a "lease."

3. The "Felicidad" case can not relate in any way to the grounds upon which the Government of the United States requests the restoration of the company's property pending legal settlement. (That case, however, was decided in favor of the company.)

4. The fact that the receiver is shipping thousands of tons of asphalt of enormous value to New York, in a secret manner, does not lend a pleasing color to the case, which is subjudice.

5. The principal reason why the company's property should be restored to it is that the article 373, section 7, can not apply, as the question of a "lease" has yet to be established by the tribunals. The complaint and the company's answer are sufficient to show that this step is first necessary.

NORMAN HUTCHINSON.

[Inclosure to No. 349.]

Code of Civil Procedure (extracts from).

ART. 281. In cases of indemnity and guaranty, the plaintiff as well as the defendant may ask, at the moment of answering, for the citation of the person liable to indemnify or guarantee, and the judge shall order the same to be done immediately; but the course of the cause shall not be suspended except when there is authentic proof either directly of the obligation to indemnify or guarantee, or of the act from which such obligation arises as of right.

ART. 284. The party who requests that an extraordinary term be granted him for the taking of evidence in places which are situated at more than two thousand kilometers from that at which the suit is being carried on shall necessarily make his request at the moment of answering the action and put forward the proof or securities on which the petition is based. The opposite party shall state whether he objects or not to the granting of the request, and the tribunal shall restrict itself to declaring that the petition has been duly made and shall make the necessary order after the taking of the evidence in conformity with the provisions on the matter.

ART. 368. At any stage or epoch of the cause whatsoever, if there is proof of the right sued for, although it be by the deposition of witnesses, when this proof is admissible according to the civil code, any of the parties may request, according to the case, and the judge may grant:

First. Prohibition to alienate the subject-matter of the dispute.

Second. The sequestration of determinate properties.

Third. Deposit of security, and in default thereof the attachment of sufficient property.

ART. 369. None of the majeurs stated in the three preceding numbers shall be ordered, or shall be executed if they are ordered, if the party against whom they have been requested or decreed give sufficient security or guaranty.

If the other party should object to the efficacy or sufficiency of the guaranty, the tribunal shall decide on the proofs put forward at the first hearing.

ART. 370. Refers to those who sue in forma pauperis.

[Inclosure to No. 349.]

ART. 373. Sequestration shall be decreed:

First. Of the chattel, the subject-matter of the action when the defendant has no responsible property, and it is with reason feared that he may conceal, alienate, or deteriorate it.

Second. Of the subject-matter when its possession is doubtful.

Third. Of the wife's property, and in default thereof of that of the conjugal partnership, or of the husband, sufficient to cover the former when the husband wastes the wife's property.

Fourth. Of sufficient property of the inheritance, or, in default thereof, of the defendant, when he who has been deprived of his lawful property reclaims it from those who take or hold his inherited estate.

Fifth. Of the real property which the defendant purchased and is enjoying without paying the purchase money.

Sixth. Of the subject-matter in dispute when, definite judgment having been given against the holder thereof, the latter appeals without giving security to answer for the said subject-matter and its fruits, although it be real estate.

Seventh. Of the property leased, if the defendant is sued for default in payment of the rental; on account of the property's becoming deteriorated; or on account of having failed to make improvements to which he is bound by the contract, provided any of the circumstances be proved in the manner indicated in article 368.

In this case the owner, and the purchaser in the case mentioned in No. 5, may demand an order that they themselves be named repository, and the property shall *remain subject* to answer the lessee or the purchaser when necessary.

[Inclosure to No. 349.]

Mr. Hutchinson to Department of State.

AMERICAN LEGATION,
Caracas, November 11, 1904.

The inclosed are intended to be put with my No. 349, of October 29, 1904. As explained in that dispatch, it was impossible at the time to finish them.

I inclose a better translation of Señor Sanabria's note to this legation; also a copy of the same as sent in Spanish; and a copy of the article 373.

[Inclosure to No. 349—Translation.]

Mr. Sanabria to Mr. Hutchinson.

CARACAS, *October 29, 1904.*

SIR: In one of our recent interviews your honor had the kindness to read to me the note which under date of the 26th of August last past was sent by Mr. Adee, Acting Secretary of State of the Untied States, regarding a certain request previously made by the American legation concerning a suit brought by the Government of the Republic against the New York and Bermudez Company. Your honor also kindly left me a copy of the note referred to.

I have informed the Executive of the contents of the communication from the Department of State, and in accordance with the instructions which have been given me in this matter I beg to give your honor the following reply:

As may be seen from the correspondence which I have had the honor to carry on regarding this matter with the worthy legation of which your honor is now in charge, the Government of Venezuela has always said to the Government of the United States that the above-mentioned suit having been submitted to the decision of a competent tribunal, the sole recourse of the interested parties was to take such steps and other measures of defense before the judges as they are entitled to. Such declaration is easily seen to be explainable, for apart from the fact that in Venezuela, as in all civilized countries, complete separation exists between the several branches of the public power, in the case of which we are treating the only power prescribed by the Executive is to cause this separation to be respected, and by this means safeguard the independence of the courts of the nation. And as it is a fact that the New York and Bermudez Company has been able, under the Venezuelan laws, to enter upon its defense in the way it has thought most expedient to select, it can be assured that any interference that any other persons might attempt to effect in the course of the suit would not be based on a just cause. With the exception of persons who hold the position of either plaintiff or defendant in the controversy, it would be in vain to endeavor to find any other who actually has the right to interfere in the suit now in course. The above means have existed and still exist for keeping the suit within the limits prescribed by the law which governs it according to extremely well-known principles, and it has also been taken into account by the Executive that any discussion whatever outside of the court proceedings in entirely foreign to the ends aimed at by the legislator, not only because it is useless, since the magistrates who will have to decide the various points on which it is based will not pay any attention to it, but also such a principle is unacceptable. Moreover, it tends to ignore the legitimate authority bestowed on the officials who have the sovereign authority to decide.

It is well that the company should allege in due time each and every of the reasons which Mr. Adee's note contains. It is well that the company should petition the court, as it has done, for the revocation of the decree of separation. It is well, finally, that the company should submit to the consideration of the court any complaints it may have to make against all or any of the acts of the person appointed depositary, who necessarily will be responsible for them in such capacity. All this comes within the provisions to which the suit in course is subject and consequently within the faculties of the judicial authority called to decide it; but consequently the Executive could not take cognizance of the various points to which I have just referred and which are analyzed at length in the communication from the Secretary of State without usurping the authority given by the constitution to another department. By acting in this way the Government of Venezuela not only complies with its primordial duty of obeying the provisions of the federal constitution, but submits to well-defined and univerally adopted precedents and principles.

For the rest the reasons the Executive has had to ask for the sequestration of the mine, which the company possessed under the Hamilton contract, are justified by the peremptory duties that public administration is called upon to fulfill for the good of the community. They appear from the judicial proceedings as well as the decision now appealed from, which in first instance confirmed that measure which legally and justly the plaintiff asked for.

The Executive can neither refute declarations which the judge will necessarily take into account in due time nor be wanting in respect toward the highest court of justice in the State, and it must forbear to qualify any acts or facts which only the court is in a position to consider and define.

The Executive hopes that these friendly and frank declarations will be duly accepted by the American Government not only in behalf of the interest that on various occasions has inspired the traditional harmony existing between both nations, but also in consonance with the careful respect in which the United States have held the inalienable authority of courts of justice.

I have, etc., GUST. J. SANABRIA.

[Inclosure to No. 349.]

Mr. Wright to New York and Bermudez Company.

CARACAS, *October 30, 1904.*

DEAR SIRS: Inclosed please find copies of the two cables sent you on October 28, 1904. I was informed yesterday that the cable sent by me October 28, and addressed to Wellow, Philadelphia, had been held up by the Government censor. This information came from the cable company. I at once sent Pastor to investigate and report what the matter was. He first saw the cable people, and they stated as follows: "The Government censor stopped the cable and reported it to General Valerino, the Government director of telegraphs, who asked us who was sending this cable. We replied, 'Mr. Wright, the managing director of the New York and Bermudez Company.'" Mr. Pastor then interviewed General Valerino, who told him that when he asked the cable company who was sending that cable the reply was: "We believe it is sent by some one in the employ of the Bermudez, of which Mr. Carner is the managing director." Mr. Pastor then showed General Valerino the receipt of the cable company, which was made out in my name, but the General said that before the cable could go forward it would be necessary for me to see the minister of interior and get an order from him to that effect. This I have not yet been able to do, and I suppose they will hold up all my cables. I believe the statement of the cable company is absolutely correct and that the Government has purposely garbled it to make an excuse to hold my cables until I show them my codes, which of course I will not do. I have reported the case to Mr. Hutchinson, who is taking it up with the Department of State.

In this connection the following occurs to me: This Government has a suit against the cable company for cancellation of their concession, and it has been held in suspense with the hope that the French would furnish the money to consolidate the foreign debt. Yesterday Jackband received private information from Germany that the Germans had agreed to furnish the money, taking the custom-houses as security, and there is every reason to suppose the information to be correct. If this is the case, it will account for this sudden action, and unless our Government acts promptly this Government will, in case of a demand from our Government, play the Germans against us, and as the only vulnerable point here is the pocket, and that being in the hands of the Germans, we will have serious international difficulty to overcome.

Yours, etc.,

ROBERT K. WRIGHT.

Mr. Hutchinson to Secretary of State.

[Telegram.]

CARACAS, *November 5, 1904—9.12 a. m.*

Notify New York and Bermudez Company, Philadelphia, the Venezuelan Government has stopped the last two cables in cipher from their manager. Shall I take any action?

HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

No. 350.] AMERICAN LEGATION,
Caracas, November 5, 1904.

SIR: I have the honor to confirm my telegram of to-day, which deciphered read as follows:

Notify New York and Bermudas (Bermudez) Company, Philadelphia, the Venezuelan Government has stopped the last two cables in cipher from their manager. Shall I take any action?

HUTCHINSON.

And the Department's reply, in cipher, of to-day, reading as follows:

No action necessary at present.

LOOMIS.

As the word "Bermudez" did not appear in the code I knew the Department would understand what was meant by "Bermudas."

I sent the telegram in question because, for the second time, the manager of the New York and Bermudez Company complained to me that his cables, even in cipher, are being stopped by the fiscal. Upon his first complaint I advised the Department in my No. 349, of October 19, at the conclusion of the dispatch, that Mr. Wright's cables were being interfered with and inclosed papers to prove the fact.

Upon his second complaint I sent my telegram of this morning's date. In accord with the Department's instructions, this legation will take no action in relation thereto for the present.

I have, etc.,

NORMAN HUTCHINSON.

Chargé Hutchinson to the Secretary of State.

No. 357.] AMERICAN LEGATION,
Caracas, November 13, 1904.

SIR: I have the honor to confirm my telegram of this morning to the Department, reading as follows:

Our newspaper friend expelled by President's decree. Must leave to-morrow, though I asked week's respite in which to settle his private affairs. The reason given is, prejudicial to public safety (order). See my dispatch No. 343.

HUTCHINSON.

The above telegram I directed to Mr. Loomis, as I knew he would understand who "our newspaper friend" was, and owing to lack of time I could not look up the working of the code used for proper names.

At half past 7 this morning, Mr. A. F. Jaurett, the newspaper friend in question, an American citizen and correspondent of the New York Herald, telephoned me that he had just received word to present himself at the ministry of interior within half an hour so that the secretary of the Government could read to him an order of expulsion, which came out in the Official Gazette late last evening in the form of a Presidential decree. (Copy and translation inclosed.)

I at once hastened to Mr. Jaurett's house and asked him to go with me to the residence of the minister of foreign relations. There I asked Señor Sanabria if he could not arrange as a favor to me that

Mr. Jaurett should have until the sailing of the steamer leaving one week from to-morrow from La Guaira, as he could understand that Mr. Jaurett's affairs have grown to quite a great extent since his arrival in the country, some eight years ago, and that it would take him several days at least to settle his affairs without considerable personal loss. Señor Sanabria was surprised to learn of the expulsion, as he had had no notice of it, which he should have had, from the fact that Mr. Jaurett is consul of Panama. However, he said he would at once go to the minister of interior and see if Mr. Jaurett would be permitted to delay his departure one week, and that he would at once inform me of the result.

Mr. Jaurett then went to the telegraph office and sent a telegram to President Castro, in which he asked a few days leave in which to settle his private affairs, and adding that he had, during the blockade, done something toward assisting Venezuela out of an embarrassing position.

I then went to my residence and in a few minutes the minister of foreign relations arrived. He said he had seen the minister of interior, and that the week's respite would not be granted, and that he was very sorry personally, as Mr. Jaurett had been always on such friendly terms with him. He added that the foreign representatives would probably inform me how glad they were that Mr. Jaurett was gone, and that he knew they did not like him. He also said his Government had accumulated a great deal of proof against Jaurett, in the matter of sending telegrams abroad, which were prejudicial to the good order of the country. Mr. Jaurett's exequatur, as Panaman consul, had been withdrawn by the President, he said, but that the decree withdrawing the same had not yet been published in the Official Gazette.

As I was intending to send the telegram to the Department, which I did send, I awaited the departure of the minister with considerable anxiety, as it was then about 10 o'clock, and the cable office closes at about half past 10 on Sundays. The minister, however, lingered on for some time, and at the time he left he must have spent a half hour at my house.

I then hastened off the above telegram to the Department as best I could.

This noon I sent a telegram to President Castro (copy and translation inclosed), asking his excellency if he could concede to Mr. Jaurett until the 21st of this month, for the arranging and settlement of his private affairs. In fact, I have done everything in my power to get the time of expulsion extended. Without instructions from the Department I can not do more, as the Department distinctly forbid my taking any action of any kind without first obtaining instructions from it. From the time of receiving the notice of his expulsion, practically Mr. Jaurett has only twenty-four hours in which to settle his affairs, which are complicated, and to catch the *Philadelphia* at La Guaira.

It appears to me that a protest in such a case is quite proper. The European governments are complaining about these expulsions, in which a foreigner, with considerable wealth and business affairs, is turned out of the country by a Presidential decree, which offers no proof of wrongdoing or behavior, and which usually appears on a Saturday evening, so that one has no time to protest or complain to

the authorities. It will be noted that President Castro suddenly left Caracas yesterday for a distant point in the country. In the present case, nothing is asked for by Mr. Jaurett but a fair time in which to settle his affairs. This, up to the time of writing, has not been accorded, and I do not expect a favorable reply from the President, if one at all.

I have, etc., NORMAN HUTCHINSON.

[Inclosure.—Translation.]

Chargé Hutchinson to the President of the Venezuelan Republic.

CARACAS, *November 13, 1904.*

Could Your Excellency concede until the 21st of the present month to Mr. Jaurett in which to arrange his private affairs?

NORMAN HUTCHINSON.

[Inclosure.—Translation.]

The Provisional President of the United States of Venezuela, in virtue of the attribution 22 of article 80 of the national constitution, decrees:

ARTICLE 1. Shall be expulsed from the territory of the Republic the foreigner, A. F. G. Jaurett, notoriously prejudicial to the public order.

ART. 2. The provisional presidents of the States, the governors of federal districts, the governors of federal territories, and the administrators of the custom-houses shall take care that the said foreigner shall not return to Venezuelan territory.

ART. 3. The minister of the interior is charged with the execution of the present decree and the communication of it to whom it may be necessary.

Given, signed, and sealed with the seal of the National Executive, and referred to the minister of the interior, in Caracas, 12 of November, 1904. Ninety-fourth year of the Independence and 46th of the federation.

CIPRIANO CASTRO.

The minister of the interior, LUCIO BALDO.

Chargé Hutchinson to the Secretary of State.

No. 363.] AMERICAN LEGATION.
Caracas, November 17, 1904.

SIR: In further connection with my No. 343 of October 26 and my No. 357 of November 13, this year, I have the honor to acknowledge the receipt of the Department's telegram of yesterday, which, deciphered, read as follows:

Has the person referred to in yours of 13th left Venezuela?

LOOMIS.

The person referred to being Mr. A. F. Jaurett.

On the same day I replied to the Department as follows:

Yes; sailed on the *Philadelphia* 14th; destination Porto Rico.

HUTCHINSON.

I have the honor to include with this dispatch a copy of a letter of protest handed to me by Mr. Jaurett on the day of his expulsion from Venezuelan territory.

In this letter, addressed to me, Mr. Jaurett protests against his expulsion, stating that it is without cause or reason whatsoever. He

protests against the summary manner of his expulsion, only having had twenty-four hours' notice before being compelled to leave the country, and having received that notice on a Sunday, a day upon which he had no opportunity to settle up his numerous affairs or attend to his banking transactions. The banks were not open on the Monday before his train left for the port of La Guaira. His private business transactions had extended over a period of eight years, the time of his residence in this country, and were necessarily extensive. He claims his expulsion has and will result in great financial loss to him. He concludes by asking this legation to present his protest to the Venezuelan Government.

Before so doing, however, in accord with the Department's instructions of September 2, 1904, to me, I beg to ask the Department to advise me if I shall present the said protest or not?

I wish to call the Department's attention to the Venezuelan laws affecting foreigners, a translation of which I inclose. As Mr. Jaurett owns a house in this city, it would appear from a perusal of the laws in question that he was a domiciled foreigner. If so, the matter of his expulsion was a question for the courts. On the other hand, the President seems to have an unlimited right to make decrees which become the supreme law of the land.

As an example of duplicity of this Government, on last Sunday morning the minister of foreign relations told me he had known nothing about Mr. Jaurett's expulsion until I told him, and remarked that it would be necessary to revoke Mr. Jaurett's exequatur as consul of Panama before he could be expelled. On Monday morning, in the Official Gazette, I saw an Executive order, signed by the minister of foreign relations only, revoking Mr. Jaurett's exequatur, and dated the 12th, or Saturday, when, according to the minister's own statement, he could not have known anything about Mr. Jaurett's expulsion. On Sunday, also, he had told me at our second meeting, in my house, that the President had signed an order on Saturday revoking the exequatur. Technically, then, Mr. Jaurett's expulsion was somewhat illegal, in so far as I can make out.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure No. 1.]

Mr. Jaurett to Chargé Hutchinson.

CARACAS, *November 13, 1904.*

SIR: I, Albert Felix Jaurett, American citizen, editor of the Venezuelan Herald, residing for eight years last past at Caracas, in the Republic of Venezuela, energetically protest against the decree expelling me from the territory of the said Republic, without any cause or reason whatsoever, which was published in yesterday's Venezuelan Official Gazette, and ordering me to be deported within twenty-four hours, thereby depriving me absolutely—to-day, the 13th of November being a Sunday—of all means of arranging my pending affairs or even withdrawing the money which I have on deposit in various credit institutions; obliging me to abandon my house and valuable furniture; impossibilitating me from realizing the numerous securities which I at present hold; forcing me to suspend the publication of the Venezuelan Herald, which is a source of income to me; compelling me to sell my valuable objects of art to the nearest purchaser at an enormous sacrifice, and, finally, putting a complete stop to all the business in which I am at present engaged.

I therefore have the honor to ask you to enter this protest at the American legation and to advise the Venezuelan Government that I shall bring a claim against them for the amount which I shall determine on my arrival in the United States.

I again energetically protest against the action of the Government of Venezuela and emphatically state that I have committed no act whatsoever, whether of an overt or public nature, detrimental to the Government of this Republic or to the maintenance of public order therein.

I have, etc., A. F. JAURETT.

[Inclosure.]

Law defining the duties and rights of foreigners in Venezuela.

[Specially translated for "The Associated Press."]

The Congress of the United States of Venezuela decrees:

ART. 1. Foreigners shall enjoy in the territory of Venezuela the same rights as Venezuelans, as is determined by the constitution of the Republic.

ART. 2. Foreigners found within the territory of the United States of Venezuela shall be considered either as resident or in transit.

ART. 3. Domiciled foreigners are—

1. Those who have acquired residence in conformity with the provisions of the civil code.
2. Those who have voluntarily and without interruption resided within the territory for more than two years without diplomatic character.
3. Those who own real estate within the territory of the Republic and who have established permanent residence therein.
4. Those who have been residing in the territory of the Republic for more than two years and who are engaged in commercial pursuits or any other kind of industry, provided they have a house established in a permanent way, even though invested with the character of consul.

ART. 4. Foreigners in transit are such as are found within the territory of the Republic and are not comprised within the definitions of the preceding article.

ART. 5. Resident foreigners are subject to the same obligations as the Venezuelans, both as to their persons as well as their properties, but they are not subject to military service nor to the payment of forced and extraordinary war contributions in case of revolution or of internal armed warfare.

ART. 6. Foreigners domiciled or in transit must not mix in the political affairs of the Republic nor in anything relating to said political affairs. To this end they can not—

1. Form a part of political societies.
2. Edit political newspapers *or write about the interior or exterior politics of the country in any newspaper.*
3. Fill public office or employment.
4. Take arms in the domestic contentions of the Republic.
5. Deliver speeches which in any way relate to the politics of the country.

ART. 7. Domiciled foreigners who violate any of the provisions established in article 6, lose their character of foreigners, and become ipso facto, subjected to the responsibilities, burdens, and obligations which might be occasioned to natives through intestine political contingency.

ART. 8. If in contravention of the express prohibition of this law any foreigner exercises any public charge, without being empowered thereto in conformity with section 22, article 54 of the constitution, his acts are null, and the person elected and the functionary who names him are jointly responsible for the same.

ART. 9. Foreigners in transit who violate the provisions of article 6 shall be immediately expelled from the territory of the Republic.

ART. 10. The presidents of the States, the governor of the federal district, and the governors of the federal territories, upon becoming aware that any one or more of the domiciled foreigners residing in their respective jurisdictions intermeddle in the political affairs of the Republic, they shall bring a proper legal action through the ordinary tribunals, transmitting the proceedings in the cases to the Federal Executive in compliance with the decree to be passed in conformity with the dispositions contained in article 7.

ART. 11. Neither domiciled foreigners nor those in transit have any right to resort to the diplomatic road, except when, having exhausted all legal means, before the competent authorities, it clearly appears that there has been a denial of justice or notorious injustice or evident violation of the principles of international law.

ART. 12. Foreigners already, or to be hereafter domiciled and those in transit, who are not invested with a diplomatic character, shall be obliged to make a declaration, before the civil authority of the place in which they may be, that they submit to the

provisions of the present law in their entirety, and to those of the decree of the 12th of February, 1873, which establishes the rules for the indemnization of foreigners.

All foreigners who omit to make this declaration shall be expelled from the country within a term to be appointed by the National Executive.

ART. 13. The civil authorities before whom the declaration should be made shall use common paper therefor and shall not make any charge whatsoever. The originals of these documents shall be transmitted to the minister of the interior.

ART. 14. The National Executive shall not issue exequaturs for the consular or vice-consular service to persons who are engaged in trade.

ART. 15. The establishment within the country of any societies of any kind whatsoever, who do not fix their headquarters or domicile therein, is definitely prohibited.

ART. 16. Foreigners, like Venezuelans, have the right to bring claims against the nation for indemnization for loss or damage occasioned them in time of war by the legally constituted civil or military authorities, provided always that the latter were acting in their political character; but they shall be able to make these claims only by the proceedings established in the interior legislation in purpose of proving the loss or damage suffered, and also their just value.

ART. 17. Neither foreigners nor Venezuelans can bring any claim against the Government of Venezuela for loss or damage occasioned by revolutionary agents or armed bands in the service of any revolution, but they shall have the right to institute personal actions against the authors of the damage for the loss suffered.

ART. 18. The provisions of this law are without prejudice to the agreements contained in public treaties.

ART. 19. The presidents of the States, the governor of the federal district, and the governors of the federal territories shall immediately proceed on the promulgation of this law to draw up a list of foreigners domiciled within the territory who come within their respective jurisdictions, which they shall duly transmit to the minister of exterior relations.

ART. 20. Foreigners who should come to the Republic shall, in order to be admitted within its territory, be under the obligation of presenting before the principal civil authority of the place where they entered the documents which prove their personal status and a certificate of good conduct issued by the authorities at their last place of domicile, which documents shall be in due legal form.

ART. 21. The National Executive shall make rules and regulations for the working of the present law.

ART. 22. The Executive decree of the 14th of February, 1873, which determines the rights and duties of foreigners, and the Executive decree of the 30th of July, 1897, which treats of the interference of foreigners in the electoral affairs of the country, are hereby repealed.

Given at the legislative federal palace, in Caracas, this 11th day of April, 1903—Year 92 of the independence and 45 of the federation.

J. A. VELUTINI, *President of the Senate.*

Federal palace, in Caracas, this 16th day of April, 1903—Year 92 of the independence and 45 of the federation. To be executed.

CIPRIANO CASTRO.

Mr. Hutchinson to Mr. Hay.

No. 360.] AMERICAN LEGATION,
Caracas, November 20, 1904.

SIR: In further connection with my No. 349, of October 29, and my No. 350, of November 5, 1904, I have the honor to inclose copies of letters exchanged between Mr. Robert K. Wright and the managing director of the New York and Bermudez Company and this legation respecting the stoppage of the former's cipher telegrams to his company by the Venezuelan authorities.

According to Mr. Wright's letter of the 12th (copy inclosed), the two telegrams referred to in my previous dispatches have not yet been allowed to pass, one having been delayed since the 28th ultimo (about three weeks) and the other since the 4th instant (about two

weeks). It is evident from Mr. Wright's letter of the 18th that the Venezuelan authorities do not intend that any of his cipher telegrams shall pass the fiscal, and this is made certain by the answer of the minister of fomento (copy and translation inclosed) to Mr. Wright's formal protest (copy inclosed).

The minister of fomento, Señor Arnaldo Morales, points out that the name of the sender of the telegrams in question was not satisfactorily given to the fiscal by the French Cable Company and that the telegrams were in cipher, which is against the law, only diplomatic ministers having a legal right to send cipher messages without being challenged. The minister's dictum, in which he states the company has not yet cleared itself from the charge of being revolutionary, is founded on hitherto unknown laws.

The company has sent cipher messages for several years without having been challenged until the present time. The very fact that litigation is pending between this Government and the company is sufficient to show that this Government is capable of suppressing all the evidence it can in favor of the company, and the stoppage of the telegrams, in view of the pending litigation and without a fair cause, constitutes a denial of justice and right of a very grave nature.

In accord with instructions already received from the Department, this legation will take no present action in the premises.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure to No. 360.]

Mr. Wright to Mr. Hutchinson.

CARACAS, *November 12, 1904.*

SIR: I beg to call your official attention to the following facts:

On October 28, 1904, I addressed a cable to "Wellow-Filadelfia," which is the cable address registered in Philadelphia of one of the departments of this company; said cable was entirely on the company's business and related to the litigation now in progress here, to which the Venezuelan Government is a party, and was in answer to a cable received by me from the company on October 27. My cable was accepted by the cable company, paid for by me, and the receipt was made out in my name; my name was also entered on the stub of the receipt book in the cable office, which book is always subject to the inspection of the Venezuelan authorities. This cable was stopped by the Venezuelan Government fiscal, or censor, at La Guaira, and has never been sent. The only reason given for this detention is that when the cable company was asked by General Valerino, the Government director of telegraphs, who was the sender of that cable, the answer given him, he claims, was not satisfactory. Whether or not this answer was satisfactory is a matter which should concern only the cable company and the director of telegraphs, and this company's business should not be caused to suffer by any alleged error or mistake of the cable company.

On November 4, 1904, I addressed another cable to "Gyramanda-Filadelfia," which is another registered address for this company in Philadelphia. It was accepted by the cable company and receipted for, as was done with the previous cable, and numbered 24; it also was stopped by the Venezuelan Government fiscal, or censor, at La Guaira, and has not yet been allowed to go forward. No reason whatever has been given for the stoppage of this cable.

As the Venezuelan Government is the plaintiff in two suits against this company in its own courts here, you can readily see that if it possesses and exercises the power to stop or interfere with the means of communication by cable or otherwise between this office and the headquarters of the company in Philadelphia, that this constitutes a grave denial of justice, and I beg that you will call the attention of the Venezuelan Government to the above abuse of power and international right and request that the necessary orders be given to allow my cable to be sent and received free from all detention.

You have my positive assurance that no cable has been or will be sent by me except such as refer to the legitimate business of this company; and while we might be willing, under ordinary circumstances, to disclose to the Government the contents of our cables, as we are now in litigation with the Government, and our cables relate to said litigation, it is manifestly impossible to do so at present, and the Government should not expect it.

I am, etc., ROBERT K. WRIGHT.

[Inclosure to No. 360.]

Mr. Wright to Mr. Hutchinson.

CARACAS, *November 18, 1904.*

DEAR SIR: I have the honor to inclose herewith copy of protest addressed by me to the minister of fomento, together with his reply in returning the same, and translations of both papers.

In regard to the above I beg to inform you that this company has been sending cables in this manner for several years, even during the blockade and while a state of actual war existed, without interference from the Venezuelan Government; and I have personally been sending and receiving them as the company's representative in this manner also for several months without any question.

I desire also to state that there can be nothing doubtful about the signatures to the two cables in question, as this company is a large user of the cable and has always sent them in the way that these were sent; and they are stopped now for the express purpose of preventing any quick conference with my superiors in Philadelphia, hoping thereby to prevent our making any headway in the suit brought against it, or, in case we translate our cables, to be advised beforehand of the exact nature and value of our defense.

Under these circumstances, it appears to come under the head of a denial of justice, and I submit the matter to your attention and to that of the Department of State, that you may take such steps as may be deemed advisable.

I am, etc., ROBERT K. WRIGHT.

[Inclosure to No. 360—Translation.]

Mr. Morales to Mr. Wright.

CARACAS, *November 16, 1904.*

Immediately on receipt of your protest at this Department, I addressed myself to the director-general of telegraphs, who reports as follows:

"CARACAS, *November 15, 1904—94 and 46.*

"CITIZEN MINISTER OF FOMENTO: Referring to the protest made by Mr. Wright, of the New York and Bermudez Company, I beg to report as follows: On October 28, at 7.40 p. m., the censor in La Guaira held a cablegram addressed 'Philadelphia—Wellow,' bearing as responsible signature, 'Wright, manager of Bermudez & Co.' As there is not in Caracas any mercantile firm under the name of 'Bermudez & Co.' a rectification was asked for through the censor's making him inquire whether the sender was some functionary of the New York and Bermudez Company. Said censor answered, 'I am informed by the clerk that it is a functionary of the Bermudez Company, of which Mr. Carner is a representative.' As the cablegram was a doubtful one, I send it for consultation for Doctor Baldo and has been held up to now. The 4th instant, at 10.40 a. m., another cablegram, No. 24, from Caracas, addressed Philadelphia, for 'Giramand,' also with a very doubtful signature, came for consultation. It was reported, 'Responsible signature, New York and Bermudez Company,' by the cable office here. The cable office in Caracas, on being asked again to give a responsible signature clear enough, said that it could not give any further information about cablegram No. 24 from Caracas for Philadelphia than that at the foot of the message, 'New York and Bermudez and Co.' and a reason for which said message was also held, the responsible signature not being clear enough. God and Federation.

"E. VICENTE VALARINO."

Moreover it was noted that the messages referred to were mostly written in code, and it is a law universally admitted that only diplomatic ministers can send messages in such conditions without being allowed to go through by the censor.

What has been done in the case of a representative of the New York and Bermudez Company is the more justified by the fact that said company has not yet justified itself

from the charge of being revolutionist against the institutions and Government of Venezuela which has caused the nation serious and great damages; and such proceedings would be the more justified if the above-mentioned protest involves an attempt made by said company to defend rights which it can not establish otherwise. Wherefore it is resolved not to accept said protest and to return it with the present resolution.

God, etc.

ARNALDO MORALES.

[Inclosure to No. 360—Translation.]

Mr. Wright to minister of fomento.

Robert K. Wright, an American citizen, residing in this capital, acting for and in behalf of the Bermudez Company, of which I am the managing director in Venezuela, appears before you and with the greatest respect shows:

That on October 28, 1904, I addressed a cable to "Wellow," Philadelphia, which is one of said company's registered cable addresses in Philadelphia, which cable was accepted by the French Cable Company, and a receipt for the payment for said cable, duly made out in my name and numbered 107 by the said cable company was given to me. Said cable was stopped by the Venezuelan Government fiscal, or censor, at La Guaira and has never been forwarded.

That on November 4, 1904, I addressed a cable to "Gyramand," Philadelphia, which is also one of the registered cable addresses of this company in Philadelphia, which cable was accepted by the cable company and paid for, and a receipt, No. 24, by said company made out in my name, was given me. This cable was also stopped by the Venezuelan Government fiscal or censor at La Guaira and has never been allowed to go forward to its destination.

With the greatest respect for your excellency and in accordance with my duties as managing director of the New York and Bermudez Company, I present in the name of said company a formal protest against the detention of the above-mentioned cables, which relate solely to the business of this company in relation to the suits now pending before the courts of Venezuela, and respectfully call your attention to the fact that under the circumstances said detention constitutes a grave denial of justice and right, and has caused and continues to cause great loss and damage to the New York and Bermudez Company.

The president of the New York and Bermudez Company has directed me to inform your excellency that this company will hold the Venezuelan Government responsible for all losses and damages of whatever nature and kind arising from the above acts of detentions and from any other similar acts that may be committed in the future.

I beg that your excellency will give the necessary orders that I be furnished with certified copies in duplicate of this protest and that all my cables in the future shall go forth without detention, hereby certifying that no cables have been sent by me in the past nor will be sent in the future except such as relate exclusively to the legitimate business of this company.

It is justice that I ask in Caracas this 12th November, 1904.

ROBERT K. WRIGHT.

The Secretary of State to Chargé Hutchinson.

[Telegram.]

DEPARTMENT OF STATE,
Washington, November 21, 1904.

You will immediately use your strenuous good offices with the Venezuelan Government to speed the prompt, impartial, and final trial and decision of the asphalt case.

HAY.

Mr. Hutchinson to Mr. Hay.

AMERICAN LEGATION,
Caracas, November 24, 1904.

SIR: I have the honor to confirm the following telegram, sent by the manager of the New York and Bermudez Company here to his superiors at Philadelphia, through the medium of the legation and Department, because of the fact that this Government is stopping the company's cables sent in the ordinary way:

Inform asphalt company agent was sent Guanoco (company's code word used) to collect testimony; was arrested and expelled by the agent of the attorney-general. Lawyer Pinango (company's code word used) was threatened with death. It is impossible to obtain impartial trial. (Signed) Wright.

HUTCHINSON.

This cable will be paid here by the company's manager, at whose request it was sent.

I have, etc., NORMAN HUTCHINSON.

The Acting Secretary of State to Chargé Hutchinson.

[Telegram.]

DEPARTMENT OF STATE,
Washington, November 26, 1904.

Department's request to the Venezuelan Government to instruct its attorney-general to move the court to discharge the receiver is consistent with and stands with the Department's request for prompt and impartial trial and decision.

LOOMIS.

Mr. Hutchinson to Mr. Hay.

[Telegram.]

CARACAS, *November 26, 1904—2.30. p. m.*

Followed instructions, and Venezuelan minister for foreign affairs is giving out notice that the Department of State has given in to the Venezuelan Government and has abandoned the request for the removal of the receiver. I told him we still reserved the point if necessary. Have done all in my power verbally. Have but little faith in procuring absolutely impartial trial, owing to the President's inclinations. Full particulars by mail.

HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

No. 368.] AMERICAN LEGATION,
Caracas, November 26, 1904.

SIR: I have the honor to acknowledge the receipt of the Department's cipher telegram of the 22d instant instructing me as follows:

"You will immediately use your strenuous good offices with the Venezuelan Government to speed the prompt, impartial, and final trial and decision of the asphalt case.

"HAY."

In accord with the above instruction, I have the honor to report that I made an appointment with Señor Sanabria, minister of foreign relations, to receive me at the ministry on the morning of the 23d instant at 9.15 o'clock.

I passed three hours with him, in a perfect atmosphere of cordiality, during which time we discussed the principal questions before us, "the prompt, impartial, and final trial and decision of the asphalt case."

In substance, I said I had received further instructions from the Government of the United States, in relation to the New York and Bermudez Company's Case. That my Government dropped for the present the discussion on the removal of the order of sequestration, but reserved the point if necessary for the future. The Government of the United States now urged the Government of Venezuela to use its good offices in speeding a prompt, impartial, and final trial and decision in the courts. I asked if His Excellency's Government could not do something to bring about a prompt decision; and, that he must see that every day that passed meant a great loss to the company in its interest. I asked if he could give me any idea when the final decision might be expected.

Señor Sanabria replied that his Government could not interfere or make suggestions to the court in this respect, just as before, in the case of the removal of the order of sequestration, his Government could not influence the courts, which had their proper functions and were carrying them out in accord with the strict letter of the law, and as expeditously as possible. He said he could not speak to any of the judges, but he would approach the attorney-general of the nation and explain to him that the Venezuelan Government was anxious and deemed it to its interest to have a prompt, impartial, and final decision of the case, and that he would ask the attorney-general to say, so near as possible, by what date the desired result might be expected. Señor Sanabria said further that of course the gathering of testimony and presentation of it must be considered and that the courts could not deny the parties asking for such time and postponements as the law allows.

I then took up the subject of impartiality, without naming it to him as such. I mentioned the fact that the president of the federal and cassation court, where the final decision would be rendered, was Señor Jose Arnal, and that (1) Señor Arnal had originally made the order for the sequestration of the company's property; that (2) Señor Arnal had confirmed his order afterwards as judge of first instance; and that, finally (3), Señor Arnal would have to render his decision again at the appeal, as president of the court.

Señor Sanabria replied that Señor Arnal was a man of the highest character and reputation and perfectly fair and just. He said the President, one day, in his presence, had brought up the subject of the New York and Bermudez Company to the judge, but that the judge replied to the President: "You must know, your excellency, that I must not talk about such questions," and the President agreed.

(Señor Arnal is president of the Caracas organization which is booming General Castro for the next presidential term, 1905–1911.)

I then mentioned Judge Carlos Leon, saying that I understood he was Mr. Carner's attorney and that he was formerly attorney for the New York and Bermudez Company, and that he had a seat in the federal and cassation court.

The minister replied that he did not know, and did not believe that Judge Leon was the receiver's attorney, but he would make inquiries. He added that Judge Leon having been attorney for the company, he would be better able to render an able opinion.

I then pointed out to him that Judge Paul, vice-president of the federal and cassation court, had resigned his seat in the present case, because he had been a judge in the "Felicidad case," which was decided in favor of the company some years ago.

The minister aptly replied that if any judge was not justly acceptable to the parties to the suit that there were legal means for having him changed. This I agreed to at once as being right and proper, but I very much doubt if a change of judges would be of any benefit to the company's cause, and it is quite certain that the final decision will be against the company and that it will fail to be impartial unless the company has every opportunity to obtain and present its evidence.

The question of the stoppage of the company's cables was then brought up, and I told the minister that in addition to Captain Wright's two cables having been stopped by the Venezuelan authorities, one of November 5 from the company had been stopped, and that this state of affairs prevented the company's properly preparing its defense.

He said he agreed that it was prejudicial, but that the company had sent cipher cables from here signed "Bermudez and Company," which was not a proper identification. If the cables had been signed "Robert K. Wright" or the real name of the company they would have been transmitted. "Bermudez and Company" was not the name of any registered company in Venezuela. As regarded the stoppage of the cable from the company at Philadelphia to its manager here he felt otherwise inclined, and believed that it was wrong to stop that, and he would make inquiries about the matter.

I then brought up the question of the commission which the court is sending to get evidence as to whether the company has canalized the rivers or not. I asked if the commission had yet left Caracas, or when it would probably leave, and how long he thought it would take for them to conclude their report.

He said he would inquire of the attorney-general and let me know everything possible in relation thereto.

I then reported to him and showed to him a copy of an affidavit (copy inclosed) which states that one Scott went to Guanoco, in the employ of the company to obtain testimony for the company's case, and that he was not allowed to get testimony nor to remain, and that his life was threatened if he returned.

Señor Sanabria smiled incredulously at this, and said there was sufficient proof on the Government's side to show that many of these affidavits were mere perjuries. The same men who have sworn to affidavits in favor of the company have since sworn to affidavits, stating they were forced (dures) or bribed to make affidavits in favor of the company. These contradictory affidavits were sworn to in Trinidad, where the Venezuelan Government could not have used influence.

I concluded, by remarking to the minister, Mr. Carner, the receiver had shipped, up to the present, 5,400 tons of Bermudez asphalt to New York, consigned to the Pan-American Company, of which he is the president.

This information I got from Captain Wright and gave without comment.

Señor Sanabria made a note of this information, and then concluded by telling me that the New York and Bermudez Company had shipped very little asphalt from Venezuela and had consequently paid this Government very little in export dues; but that, on the other hand, the company had shipped an enormous quantity of asphalt from Trinidad, calling it Bermudez asphalt, and for the reason that in Trinidad it must pay a duty whether any asphalt is shipped or not, while in Venezuela it only has to pay duty when asphalt is actually shipped.

Our first conference upon the above questions here ended, the minister again promising me to do all possible to speed the trial, and I again reiterating the desire of my Government to witness the final decision of the case in the courts.

Our second conference took place on Friday afternoon, the minister having called me up on the telephone in the morning, inviting me to come to the ministry at 3 p. m.

Señor Sanabria informed me that since seeing me on Wednesday he had met and talked with the attorney-general of the Republic, and had also looked up the matter of the stoppage of the company's cables, and further questions.

As regarded the affidavit of the company's agent, Scott, a copy of which I had shown him, he said it was all a lie, that Scott had gone to Guanoco with the company's lawyer, Doctor Pinango, and that the latter had written a letter to Doctor Ponce at Guanoco, the attorney-general's agent, saying that he had been well and properly treated. Doctor Pinango went before the jefe civil with Doctor Ponce and swore to his signature on the letter in question. As for Scott, Doctor Ponce had asked him if he had any papers to show that he came as the company's agent and not to stir up trouble, and Scott was unable to produce any document. Doctor Pinango is an old friend of Doctor Ponce.

The minister mentioned, further, that one Bartlett, and he believed Scott as well, were making trips to Guanoco whenever Mr. Carner, the receiver, went away, and that they went there for the purpose of inducing the negroes to give false testimony and to quit work, offering them better wages in Trinidad.

As regarded the position of Judge Lozada, that judge had very recently resigned his seat in the court, so that he would not be one of the judges in the appeal.

In regard to the departure of the commission of experts to report on the canalization, the minister said they had been unavoidably delayed by one of its members having to arrange his private affairs. The commission would leave by the very next steamer.

Respecting what I had informed him concerning the shipping of asphalt by Mr. Carner to the Pan-American Company in New York, Señor Sanabria said Mr. Carner sold the asphalt to a broker at the lake, from whom it went to Guanoco.

As regarded the stoppage of the company's cables, the minister said there was a law by which they could be stopped unless the owner explained the contents to the minister of finance. This was to prevent revolutionary messages from being sent through commercial houses, or otherwise. He had a limit, however, that in the present case there should be an exception made to the law for the reason that the Government is one of the parties to the suit, and that it has a right to see what the other party is doing, so to prevent it from preparing its defense without its knowing. He said he would bring up this point with the attorney-general.

Finally, upon the principal question—the prompt, impartial, and final decision of the case by the courts—he said he had seen the attorney-general, and that he had told him that the Government desired and were very much interested in seeing the final

settlement of the case. The attorney-general had replied that the case would be concluded with all expedition, and that the only possibility of delay was that the company would be the cause of it. He recommended that I should advise the company to have everything on its side in readiness.

This ended the second conference.

What strikes me as certain is that Señor Sanabria has a very bad opinion of the company and its methods, and, in fact, he has said as much to me.

In drawing this dispatch to a close, I wish to say that the Department's last instructions, taken alone, make it appear that the request for the removal of the receiver has been abandoned and the consequence would be a boast on the part of General Castro that he had won a diplomatic victory. I felt it my duty, without actual instructions, to impress the minister with the fact that my Government did not drop its previous request, but only temporarily drop discussion of it. However, I could see that it was difficult to impress the minister with this view. The position taken by the Department against the sequestration is so strong and unassailable that the mere fact of not pressing its request in that direction continuously and to the end comes as a relief to the Venezuelan Government, and it is overanxious to believe that the Government of the United States has conceded a point.

I may telegraph the Department for further instructions.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure to No. 368.]

I, Philip Scott, a British subject, make oath and say as follows:

I have been employed by the New York and Bermudez Company for the last three years as timekeeper. I left Port of Spain on the 21st of October for Guanoco, and I am authorized by F. R. Bartlett, superintendent of the New York and Bermudez Company, to represent the company in his absence.

I arrived in Guanoco on the night of the 29th of October, and on my arrival was told by a number of friends that I was expected and that there was an order out for my arrest. I paid no attention to this, but proceeded to a house rented by the company off the company's property. On the morning of the 30th I sent my respects to Doctor Ponce, who I knew when he was employed by the company and who is at present the representative of the attorney-general of Venezuela, but my card reached Doctor Ponce on his way down to see me. He asked me what I was doing there, and told me that he had ordered the civil authorities there to bring me to him and that in case I refused to arrest me. On the afternoon of the same day Doctor Ponce paid me another visit and asked me to go with him to the house of the jefe civil, which I did. On my arrival there I waited in a room outside while Doctor Ponce had a lengthy conversation with the jefe civil. When Doctor Ponce came out he began a very angry conversation with me. He said I was a bad element in Guanoco, and that I had come over to make trouble among the workmen and the Government was holding that property and that I must respect it; that I was not an official of the company and that I was one too many in Guanoco.

Moreover, that all the witnesses that had been cited by the company were his men and would do as he wanted them, and that it was his intention to make me a prisoner and send me to Carupano or Maturin. Doctor Ponce left and I remained a prisoner. At 8 o'clock that night Doctor Ponce returned, and with the jefe civil and six armed men I was taken down to the house at Sisto Gil, who lives on the banks of the Guanoco River and keeps curaiaras (small canoes). At Sisto's house I asked for my baggage and two soldiers were sent for it. While we were waiting Doctor Ponce talked considerably. He told me that a Mauser bullet from one of the soldier's guns was liable to escape, and of course my family could put in a claim, but it would then be all too late. Also that he was prepared to do the same with Doctor Pinango, our attorney, if Pinango did not do as he wished him to, and he would make him a prisoner. He called me a "Jodedor Carajo." I wanted to make a protest to the jefe civil, but it was denied me. I further asked for a written order of my banishment, but this was refused. I first went to Caño Colorado and from there to Trinidad, where I arrived on the 6th of November. I must add that the accusations of Doctor Ponce are false, and that I went to Guanoco because I was ordered to do so and to get information for the company. I had about three weeks previously been ordered off the company's property by the military authorities there and have not been on the property since.

PHILIP SCOTT.

Sworn at No. 32 St. Vincent street, Port of Spain, in the island of Trinidad, this 8th day of November, A. D. 1904, before me,

[Notarial seal.] VINCENT LEON WEHEKIND,
Notary Public.

Mr. Hutchinson to Mr. Hay.

No. 367.] AMERICAN LEGATION,
Caracas, November 26, 1904.

SIR: I have the honor to confirm my telegram of this date, reading as follows:

Followed instructions, and Venezuelan minister for foreign affairs is giving out notice that the Department of State has given in to the Venezuelan Government, and has abandoned the request for the removal of the receiver. I told him we still reserved the point if necessary. Have done all in my power, verbally. Have but little faith in procuring absolutely impartial trial, owing to the President's inclinations Full particulars by mail.

HUTCHINSON.

The above is a reply to the Department's cable of the 22d instant.

I have, etc.,

NORMAN HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

No. 369.] AMERICAN LEGATION,
Caracas, November 27, 1904.

SIR: I have the honor to acknowledge the receipt of the Department's cipher message of yesterday, which arrived at half past 7, and read as follows:

Department's request to Venezuelan Government to instruct its attorney-general to move the court to discharge the receiver is consistent with and stands with Department's request for prompt and impartial trial and decision.

LOOMIS.

The above was a reply to my telegram, sent yesterday morning, in which I told the Department that a report was circulating here that the United States Government had abandoned its request for the removal of the receiver of the New York and Bermudez Company's property.

Immediately upon receiving the Department's reply I sent a note to the minister of foreign relations (copy inclosed) which puts on record that the above-named request has not been abandoned. This is the only note I have written in connection with the Department's recent telegraphic instructions, because I was afraid of making some error without a fuller explanation of the Department's views.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure with No. 369.]

Mr. Hutchinson to the Minister.

AMERICAN LEGATION,
Caracas, November 26, 1904.

Mr. MINISTER: It has come to my knowledge that there is a report current, as having come from the Venezuelan Government, that the Government of the United States has abandoned its request for the removal of the "receiver" of the New York and Bermudez Company's property.

I beg to call your excellency's attention to the fact that I expressly told your excellency that the Government of the United States did not do more than drop the discussion of its argument in this respect for the moment, reserving the privilege to

press its request further, if necessary. The request of the Government of the United States to the Venezuelan Government to instruct its attorney-general to move the court to discharge the "receiver" is consistent with and stands with the United States Government's request for a prompt and impartial trial.

I gladly avail, etc.,

NORMAN HUTCHINSON.

Mr. Hay to Mr. Hutchinson.

[Telegram.]

WASHINGTON, *November 29, 1904.*

It is represented that Albert Felix Jaurett, an American citizen, expelled from Venezuela by Executive decree. The expulsion appears to be contrary to Venezuelan constitution and international law. Further represented that Mr. Jaurett has been damaged in person and property the sum of $25,000. Advise Venezuelan Government that if facts are substantially as represented, the United States Government will expect prompt payment of full indemnity.

HAY.

The Secretary of State to Chargé Hutchinson.

No. 227.] DEPARTMENT OF STATE,
Washington, December 1, 1904.

SIR: Confirming the Department's telegram of the 29th ultimo, I have to say that Mr. Albert Felix Jaurett, an American citizen since August 6, 1894, represents to the Department that he was, on Sunday morning, November 13, 1904, expelled from Venezuela by Executive decree, a printed copy of which is filed with the Department. By the terms of this decree he was expelled by the Executive in pursuance of clause 22 of article 80 of the constitution of Venezuela. The decree assigns no specific reason for the expulsion and upon its face appears to be wholly arbitrary, as it is clearly unauthorized by the mentioned article of the constitution under which the decree of expulsion purports to have been passed. Mr. Jaurett represents that he has lived in Venezuela since March, 1896, till November 14, 1904, when he left Venezuela in obedience to the command of the said decree on the vague, intangible ground that he was notoriously prejudicial to the public order. He represents that during the entire period of his residence in Venezuela he was involved in no litigation of any kind, nor in any dispute or controversy with the authorities; that he never intermeddled in Venezuelan politics, and that he at all times yielded loyal obedience to the laws and authorities of Venezuela. He further represents that he founded the Venezuelan Herald at Caracas in 1896; that it was a valuable property; that he published and managed the business of the newspaper in his own person, and that the suspension of the publication was involved in and followed his own expulsion; that he was also engaged in other valuable businesses, as agent of the Associated Press, as representative of the Reuter Telegram Company, and as agent of the committee of foreign bondholders, all of which businesses, as well as other valuable business employments, have been lost to him by reason of his expulsion; that on Sunday morning, November 13, 1904, a Venezuelan official called and asked him to go and see the governor;

that he accordingly went in company with the American chargé, and thereupon the governor ordered him to leave the country in twenty-four hours; that he, Jaurett, represented to the governor that he could not on Sunday withdraw his money from the bank nor collect his bills and pay his debts, and in response thereto the governor informed him that there was no explanation to be given and that he, Jaurett, must leave the country; that accordingly, at half-past 7 o'clock next morning he was compelled to leave Venezuela, abandoning his house and its valuable contents and all of his other interests and businesses, and was compelled to sell certain securities which he held at a large sacrifice, his loss thereon approximating $4,000, and that by his other losses, growing out of his expulsion and the suspension of his newspaper and from the loss of his valuable employments, and by the indignity inflicted upon him as a citizen of the United States, and the violation of his personal rights and liberties, he has been damaged in the sum of $25,000.

As the matter is represented to the Department, Mr. Jaurett appears to have a just claim for indemnity against Venezeula. You will accordingly present the claim to the minister for foreign affairs and say that if the facts are substantially as represented, the Government of the United States expects from the Government of Venezuela the prompt and full indemnification of Mr. Jaurett for the the wrongs and injuries which he has sustained from the arbitrary and illegal action of its executive authority.

I am, etc., JOHN HAY.

The Secretary of State to Chargé Hutchinson.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 2, 1904.

Referring to my telegram of November 29, you will say to Venezuelan Government that the Government of the United States, being fully informed as to facts in expulsion case (Jaurett), expects immediate action to be taken in way of making expected reparation.

HAY.

Mr. Hutchinson to Mr. Hay.

[Telegram.]

CARACAS, *December 5, 1904.*

Yours of the 2d transmitted to Venezuelan minister for foreign affairs.

Newspaper says Jaurett expelled from France, absconded from Mexico.

Mr. Hutchinson to Mr. Hay.

[Telegram.]

CARACAS, *December 7, 1904.*

By Venezuelan minister for foreign affairs note of yesterday president of Venezuela replies Jaurett lived here as a French citizen, taking part in political questions, and in accordance with international

law lost the right of diplomatic protection of France or the United States. His conduct and doings were contrary to Article VI of the law of foreigners, and made Article VII applicable. Referring to indemnity Venezuela has grounds for claiming it, not Jaurett. Venezuela has a right to bring claims for many thousand dollars because of the prejudice caused by his false and alarming reports to European and American papers.

The Secretary of State to Chargé Hutchinson.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 8, 1904.

Answer of minister for foreign affairs entirely unsatisfactory in point of fact, and, for want of justification in fact of answer of Venezuelan Government you will press for immediate payment of indemnity. [Jaurett case.]

HAY.

The Secretary of State to Chargé Hutchinson.

No. 228.] DEPARTMENT OF STATE,
Washington, December 9, 1904.

SIR: I have to acknowledge the receipt of your telegram of the 7th instant, confirmed herewith, conveying the reply made by the Venezuelan minister of foreign affairs in regard to the expulsion of Mr. Jaurett, and to confirm the Department's telegram of yesterday's date in reply:

CARACAS, *December 7, 1904.*

SECRETARY OF STATE,
Washington:

By Venezuelan minister for foreign affairs' note of yesterday President of Venezuela replies Jaurett lived here as a French citizen, taking part in political questions, and in accordance with international law lost the right of diplomatic protection of France or the United States. His conduct and doings were contrary to Article VI of the law of foreigners and made Article VII applicable. Referring to indemnity, Venezuela has grounds for claiming it, not Jaurett. Venezuela has a right to bring claims for many thousand dollars because of the prejudice caused by his false and alarming reports to European and American papers.

HUTCHINSON.

WASHINGTON, *December 8, 1904.*

HUTCHINSON,
Chargé, Caracas:

Answer of minister for foreign affairs entirely unsatisfactory in point of fact, and for want of justification in fact of answer of Venezuelan Government you will press for immediate payment of indemnity.

HAY.

The Department is surprised at the statement made by the Venezuelan minister of foreign affairs, as it has abundant evidence as to the American citizenship of Mr. Jaurett and has excellent ground for believing that he did not participate in the politics of the country. On the contrary, it is a matter of common knowledge that he rendered very valuable service to Venezuela during the period of the blockade and that he has done much to call attention of foreign investors to

its resources. It is also recalled that when he was appointed consul of Panama he was promptly and cheerfully given an exequatur by the Venezuelan Government, and that this exequatur, up to the time of his expulsion, had not been withdrawn.

I am, etc., JOHN HAY.

Mr. Hutchinson to Mr. Hay.

No. 372.] AMERICAN LEGATION,
Caracas, December 10, 1904.

SIR: Referring to my No. 369 of the 27th ultimo, having to do with the New York and Bermudez Company affair, I have the honor to inclose copies of notes exchanged between this legation and the ministry of foreign relations.

The note of the minister is in answer to my note of November 26, which the Department will find inclosed with my above-named dispatch. (Copy and translation of minister's note inclosed.)

My note of December 2 (copy inclosed) was sent to the minister to act as an explanation of my note of November 26, and at the same time to acknowledge his note of December 1, above mentioned.

I have, etc.

NORMAN HUTCHINSON.

[Inclosure to No. 372.]

SIR: In this office has been received the note in which your honor communicated as having reached your knowledge the rumor which has been spreading about, as proceeding from the Government of the Republic, that the United States has abandoned its request in regard to the removal of the receiver of the mine which has been worked by the New York and Bermudez Company. Your excellency also says in it that the Government of the United States leaves for the moment the discussion relative to the removal of the receiver and reserves the right of pressing the request if deemed advisable.

The Government of Venezuela finds it impracticable to take into account the rumor which your excellency alludes to, and the publication of which is so unjustly attributed to it, the same way that it has paid, will pay little heed to versions of any kind whatsoever relative to this affair which have no official confirmation.

Regarding the second item of the affair above mentioned, I refer again to what I have expressed to the legation your excellency so honorably has in charge.

I gladly, etc.,

GUSTAVE J. SANABRIA.

[Inclosure to No. 372.]

Mr. Hutchinson to Minister of Foreign Relations.

AMERICAN LEGATION,
Caracas, December 2, 1904.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's kind note of yesterday, relating to, as your excellency states, a most unjustifiable rumor which was heard in Caracas last week, but which, by virtue of its very existence, made it my duty to put in writing, and on record, that which I had previously only expressed to your excellency verbally, namely, that the request of the Government of the United States to the Venezuelan Government to instruct its attorney-general to move the court to discharge the "receiver" of the New York and Bermudez Company's property is consistent with and stands with the United States Government's request for a prompt and impartial trial.

I gladly, etc., NORMAN HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

No. 374.] AMERICAN LEGATION,
Caracas, December 11, 1904.

SIR: In further connection with my No. 363 of the 17th ultimo, I have the honor to acknowledge the receipt of the Department's telegraphic instructions of November 29, reading as follows:

It is represented that Albert Felix Jaurett, an American citizen (was) expelled from Venezuela by Executive decree. The expulsion appears to be contrary to Venezuelan constitution and international law. Further represented that Mr. Jaurett has been damaged in person and property (to) the sum of $25,000. Advise Venezuelan Government that if facts are substantially as represented the United States Government will expect prompt payment of fullness (fullest) indemnity.

HAY.

I sent a note (copy inclosed) on the 30th ultimo, conveying the gist of the Department's instructions to this Government.

Before receiving a reply from this Government, however, the Department's second telegram, dated December 2, arrived, and read as follows:

Referring to my telegram of November 29, you will say to Venezuelan Government that the Government of the United States being fully informed as to facts in expulsion case, expects immediate action to be taken in way of making expected reparation.

HAY.

The following morning I sent the minister of foreign relations a note (copy inclosed) conveying to him the purport of my further instructions.

On the 5th instant "El Constitucional" brought out an article (copy and translation inclosed) which painted Mr. Jaurett as a degraded French officer and absconder.

It seems that most, if not all, of the foreign representatives here disliked or feared Jaurett, and that they give credence to the charges against his good name. These charges have been confirmed by M. Wiener, the French minister, who was in Mexico when Mr. Jaurett was. M. Wiener, I believe, has spoken to Mr. Bowen about Mr. Jaurett's reported doings in Mexico.

In view of the newspaper charges and the unpleasant views expressed by some of the diplomats here, I felt it my duty to communicate the information to the Department, which I did in my telegram of the 5th instant, as follows:

Yours of the 2d transmitted to the Venezuelan minister for foreign affairs. Newspaper says Jaurett expelled from France; absconded from Mexico.

HUTCHINSON.

On the 6th instant a reply (copy and translation inclosed) was received from Señor Sanabria to my two notes already mentioned. The note conveys the answer of the President, General Castro, and amounts to, or at least presages, a refusal to pay the indemnity.

The gist of this note I immediately telegraphed to the Department, December 7, as follows:

By Venezuelan minister of foreign affairs' note of yesterday, President of Venezuela replies: "Jaurett lived here as a French citizen, taking part in political questions, and in accordance with international law, lost the right to diplomatic protection of France or the United States. His conduct and doings were contrary to article 6 of the law of foreigners and made article 7 applicable. Referring to indemnity, Venezuela has grounds for claiming it, not Jaurett. Venezuela has a right to bring claims for many thousands dollars because of the prejudice caused Venezuela by his false and alarming reports to the European and American papers."

HUTCHINSON.

At 6.30 p. m., December 8, I received the Department's reply to the above, as follows:

Answer of minister for foreign affairs entirely unsatisfactory in point of fact; and, for want of justification, in fact (view) of answer of Venezuelan Government, you will press for immediate payment of indemnity.

HAY.

In accordance with the above instructions, which were a trifle obscure in deciphering, I addressed a note to the minister of foreign relations (copy inclosed) urging him to hasten the payment of the indemnity. This note I delivered myself to Señor Sanabria. He was inclined to discuss the matter before us, but I politely informed him that, as chargé d'affaires, I could not undertake to do so, or to explain to him, as he wished, why the Government of the United States did not explain why it found the President's reply unsatisfactory. When he said that Jaurett had lost his right to diplomatic protection according to international law, I remarked that the doctrine of Calvo in this respect was not exactly the doctrine as understood in Europe or America.

Señor Sanabria said my note would be put before the President at the next meeting of the cabinet, which would probably be on Monday the 12th.

As will be noted by the Department, there is a tendency on the part of this Government to enter into lengthy discussions, and to avoid the direct settlement of vital points.

The next reply of the Venezuelan Government will be telegraphed to the Department, probably in the early part of the week.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure No. 1.]

Mr. Hutchinson to Doctor Sanabria.

AMERICAN LEGATION,
CARACAS, *November 30, 1904.*

Mr. MINISTER: I have the honor to inform your excellency that it has been represented to the Department of State at Washington, that Mr. Albert Felix Jaurett, an American citizen, has been expelled from Venezuelan territory by an Executive decree, signed by the provisional president of the Republic, and dated in Caracas the 12th of November, 1904, and that Mr. Jaurett, having an established domicile in Caracas, has been damaged in person and property, by virtue of his expulsion, to the amount of $25,000 United States.

The expulsion of Mr. Jaurett appears to be contrary to the constitution of Venezuela and international law.

In accordance with instructions from the Department of State at Washington, it becomes my duty to advise your excellency that if the facts are substantially as represented, the Government of the United States will expect a prompt payment of the fullest indemnity by the Venezuelan Government.

I gladly avail myself of this opportunity to renew to your excellency the assurances of my highest consideration and esteem.

NORMAN HUTCHINSON.

[Inclosure No. 2.]

Mr. Hutchinson to Doctor Sanabria.

AMERICAN LEGATION,
Caracas, December 3, 1904.

MR. MINISTER: In further connection with my note of the 30th ultimo, I have the honor to inform your excellency, in accordance with instructions received from the Department of State, at Washington, that the Government of the United States,

being fully informed as to the facts surrounding the expulsion of Mr. Albert Felix Jaurett from Venezuelan territory, looks for immediate action to be taken in the way of expected reparation.

I gladly avail myself of this opportunity to renew to your excellency the assurances of my highest consideration and esteem.

NORMAN HUTCHINSON.

[Inclosure No. 4—Translation.]

The expelled Jaurett—What is said from Washington.

From a colleague of this city, the Eco Restaurador, we copy the following article published yesterday morning:

"WASHINGTON, *November 18.*

"It is announced that the Government of Venezuela has expelled out of that country Mr. A. F. Jaurett, an American citizen who was employed in correspondence and periodical work. Jaurett was editor of the Venezuela Herald, and it is said that he has written a series of articles against the Venezuelan Government. He was a French citizen and an officer of the army, deserting from France on account of suspicious monetary irregularities with the troops. He went to Panama at the time of de Lesseps, and when the company failed he ran away with its money. From there he went to Mexico, representing the Five Title Company of Paris, which he defrauded out of $40,000, and gambled away all the proceeds. He also defrauded other individuals. He escaped from Mexico, where he was criminally condemned. With all these antecedents, Jaurett will not have much to plead in his favor."

[Inclosure No. 6—Translation.]

Doctor Sanabria to Mr. Hutchinson.

CARACAS, *December 6, 1904.*

SIR: I have the honor to inform you that I have brought to the notice of the provisional president of the Republic the communication which you sent me concerning the indemnity to which the named Albert Felix Jaurett aspires and that I have received instructions from the above magistrate to give you the following answer:

The above-mentioned Jaurett, who lived here as a French citizen, and who according to your note appears to be of American nationality, perhaps because he has been naturalized in the United States, has taken part in the political questions of the country during the time he remained here.

As the most sound doctrine of international law teaches, such action is enough to cause a loss of diplomatic protection which legitimately either France or the United States might have accorded him. Further, the conduct and the doings of the said Jaurett were an infringement of article 6 of the law of foreigners of April 11, 1903, and made applicable the proceeding which article 7 of the same law establishes.

As to the indemnity to which you refer, it is without doubt the Republic which has grounds for demanding it of Jaurett; in no case the already mentioned individual from Venezuela. The claim which Venezuela has the right to bring against him amounts to many accounts of thousands of dollars, because of the grave prejudices which up to to-day he has occasioned the Republic by his false and alarming reports sent by him to many papers of Europe and North America.

I gladly avail, etc., GUST. J. SANABRIA.

Mr. Hutchinson to Doctor Sanabria.

[Inclosure No. 7.]

AMERICAN LEGATION,
Caracas, December 9, 1904.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's attentive note of the 6th instant, conveying the answer of his excellency the provisional president of the Republic in the matter of the indemnity for the expulsion of Albert Felix Jaurett, an American citizen, from Venezuelan territory, and, in further connection therewith, it becomes my duty to advise your excellency, in accordance with instructions from the Department of State, at Washington, that the Government of the

United States finds the answer, conveyed in your excellency's note, entirely unsatisfactory in point of fact.

Therefore, for want of justification, I beg earnestly to urge your excellency to use your good efforts toward bringing about the immediate payment, by the Government of Venezuela, of the indemnity already named.

I gladly avail myself of this opportunity to renew to your excellency the assurances of my highest consideration and esteem.

NORMAN HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

[Telegram.]

CARACAS, *December 15, 1904.*

Venezuelan minister for foreign affairs in an eleven-page note gives the reply of the President of Venezuela, who practically refuses to pay the indemnity, confirms previous reply, and cites Secretary of State to Lowell, April 25, 1882, also Seward in the Francis Carroll Case, also Secretary of State to Mr. Peyton, January 6, 1842. Insists Jaurett unable to claim diplomatic protection after breaking the laws here.

HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

No. 375.]

AMERICAN LEGATION,
CARACAS, *December 17, 1904.*

SIR: I have the honor to confirm my cipher message to the Department on December 15, reading as follows:

Venezuelan minister for foreign affairs in an eleven-page note gives the reply of the President of Venezuela, who practically refuses to pay the indemnity, confirms previous reply, and cites Secretary of State to Lowell, April 25, 1882, also Seward in the Francis Carroll case, also Secretary of State to Mr. Peyton, January 6, 1842. Insists Jaurett unable to claim diplomatic protection after breaking the laws here.

HUTCHINSON

In accordance with the Department's telegraphic instructions of December 8, which requested me to press the Venezuelan Government for payment of the Jaurett indemnity, I have seen the minister of foreign relations three different times and have urged that his Government pay the indemnity.

The Department's dispatch No. 227, of the 1st instant, which I herewith take occasion to acknowledge, presented Mr. Jaurett's representations at length; but as it added but little to the Department's three telegraphic instructions, I did no more than send the minister of foreign relations a paper setting forth Mr. Jaurett's representations (copy inclosed), which I told his excellency he might place with my note to him of the 30th ultimo, a copy of which the Department already possesses.

The last time I saw Señor Sanabria in relation to the payment of the indemnity was on Tuesday, December 13. I asked him if there

was no reply to my last note, and he said: "As Mr. Bowen is to be here in a few days, why not wait?"

I replied that my instructions had been to press for immediate payment, and that "immediate" did not indicate a desire on the part of my Government for any delay either in making the payment or giving a reply.

He then said: "Very well; I will do anything to please you; and if you wish an answer before Mr. Bowen's return I will try to give you one by to-morrow or the next day."

True to his promise, the minister sent me an eleven-page reply (copy and translation inclosed) on the following day, the gist of the contents of which I telegraphed the Department, as above.

In pressing the minister for payment of the indemnity I was acting in accordance with the Department's instructions, and also it was my desire to have the matter as far advanced as possible upon Mr. Bowen's arrival on the 19th, next Monday. I was unable, as I knew, to induce this Government to pay the indemnity, but I have succeeded in obtaining that which practically amounts to a refusal to pay.

I called the minister's attention to clause 22 of article 80, upon which the decree for expulsion was founded, but he said he had not looked up the clause and article cited in the decree. He has avoided mention of them also in his reply, for the very reason, no doubt, that the law of the constitution cited relates to foreigners not domiciled in Venezuela, whereas Mr. Jaurett was most certainly in every respect a "domiciled foreigner."

I have, etc., NORMAN HUTCHINSON.

[Inclosure No. 1 in Mr. Hutchinson's No. 375.]

In re Albert Felix Jaurett.

Mr. Albert Felix Jaurett, an American citizen since August 6, 1894, represents to the Department of State, at Washington, that he was, on Sunday morning, November 13, 1904, expelled from Venezuela by executive decree, a printed copy of which is filed in the Department of State. By the terms of this decree he was expelled by the Executive in pursuance of clause 22 of article 80 of the constitution of Venezuela. The decree assigns no specific reason for the expulsion and upon its face appears to be wholly arbitrary, as it is clearly unauthorized by the mentioned article of the constitution under which the decree of expulsion purports to have been passed. Mr. Jaurett represents that he has lived in Venezuela since March, 1896, till November 14, 1904, when he left Venezuela in obedience to the command of the said decree, on the vague, intangible ground that he was notoriously prejudicial to the public order. He represents that during the entire period of residence in Venezuela he was involved in no litigation of any kind nor in any dispute or controversy with the authorities, that he never intermeddled in Venezuelan politics, and that he at all times yielded loyal obedience to the laws and authorities of Venezuela.

He further represents that he founded the Venezuelan Herald at Caracas in 1896; that it was a valuable property; that he published and managed the business of the newspaper in his own person, and that the suspension of the publication was involved in and followed his own expulsion; that he was also engaged in other valuable businesses; as agent of the Associated Press, as representative of the Reuter Telegram Company, and as agent of the committee of the foreign bondholders, all of which businesses, as well as other valuable business employments, have been lost to him by reason of his expulsion; that on Sunday morning, November 13, 1904, a Venezuelan official called and asked him to go to see the governor; that he accordingly

went in company with the American chargé d'affaires, and thereupon the governor ordered him to leave the country in twenty-four hours; that he, Jaurett, represented to the governor that he could not, on Sunday, withdraw his money from the bank nor collect his bills and pay his debts, and in response thereto the governor informed him that there was no explanation to be given and that he, Jaurett, must leave the country; that, accordingly, at half past 7 o'clock next morning he was compelled to leave Venezuela, abandoning his house and its valuable contents and all of his other interests and businesses, and was compelled to sell certain securities which he held, at a large sacrifice, his loss thereon approximating $4,000, and that by his other losses growing out of his expulsion and the suspension of his newspaper, and from the loss of his valuable employments, and by the indignity inflicted upon him as a citizen of the United States, and the violation of his personal rights and liberties he has been damaged in the sum of $25,000 United States gold.

[Inclosure No. 3—Translation.]

Doctor Sanabria to Chargé Hutchinson.

DECEMBER 14, 1904.

SIR: I have submitted for the consideration of the provisional president of the Republic, your excellency's communication of the 9th instant, by which the United States Government insists upon the recognition and payment of damages, which Mr. Jaurett says were occasioned him by his sudden expulsion, which expulsion was caused by Mr. Jaurett himself.

The reasons expressed to the Government of the United States for not admitting the solicitude which has been made in regard to the expulsion of Mr. Jaurett fully justify the proceedings of the Executive and at the same time clear and define the situation absolutely.

The Republic can not admit the pretension of a foreigner, obliged by numerous reasons to observe the most strict neutrality in our internal political affairs, to ask and make effective the protection of his Government after having violated that duty. The contrary would create a source of damages and would expose the State to the most serious dangers. The stranger that, for any reason whatsoever, should mix in matters that only the natives have the right to discuss, the stranger that tries to alter or destroy the existing order in the nation where he resides, the stranger that systematically hostilizes the authorities which he must respect, places himself, regarding diplomatic protection, in the situation identical to that of the natives who usurp these rights and faculties in a manner so reproachable and illicit. Proceedings and acts of this nature can not but deprive the foreigner of his condition of neutral and of the right of being protected by the nation to which he belongs. Otherwise, always shielded and without any consideration, backed by a power which only has to protect lawful rights, the stranger would make strong his impunity, and, against all rules and all principles would make an associate of his faults the State to which, as a citizen, he owes obedience.

It is not known to what extent the so-called Jaurett has adhered to the American laws relative to the naturalization of foreigners; it is said that after having abandoned his native country, for reasons in which justice had to intervene, he went to Panama and afterwards to Mexico, which country he left to take refuge for a short time in Florida, where he resided for a few months before coming to Venezuela. But, be what it may, his foreign nationality, far from authorizing him to behave here in the manner in which he did, imposes upon him an entirely different behavior. In this respect I think it well to recall that which, under date of April 25, 1882, was said to Mr. Lowell by the Secretary of State, Mr. Frelinghuysen, "Its presence (American citizenship) involves the promise and the obligation to observe our laws in the interior and to peacefully help, as good citizens, to maintain our faith in foreign countries, without efforts which would mix us in internal disturbances or civil discord, with which we have not, neither do we desire, to have anything to do with at all."

How the person in question has observed the obligations that his American citizenship demanded of him is a question which, without much difficulty, will be answered by the correspondence and dispatches that the information agencies and European and American newspapers, in whose service he was, published continually about Venezuela.

In the same way could answer all the persons who knew him here in Caracas, persons to whom it is no mystery or secret, the diligence with which he used to go back

and forth, inventing false news of conflicts, spreading alarms, putting into the mouths of representatives of foreign nations and high authorities of the State ideas and information which they never said or expressed. More than once the credit of the nation and the usual transaction of the commerce were at the point of being seriously altered, with great losses to everybody, in consequence of the intrigues of Jaurett; more than once the good name of the country has been outraged by him in his communications.

The Government would have not done its duty if it had not expelled from the bosom of the community such a dangerous person and would have been guilty of negligence if it had permitted Jaurett to continue encouraging discord and giving rise to disturbances.

The sacrifices which the Republic is undergoing to keep unaltered public order are well known, crushing all attempts at insurrection, and if, in accordance with the most sacred impositions of its administration, the Government punishes the intrigues of those citizens who undertake to disturb the peace it is not understood for what reasons foreigners shall be exempted from responsibilities when they are employed in the same illegal work.

The Executive believes that nothing authorizes him to make any distinctions, and the Government of the United States itself would have to acknowledge it, because logic recommends it, and because that has been its way of procedure in similar circumstances. So much that, when the diplomatic representative of England in Washington asked the liberty of the so-called Francis Carroll whom the authorities (military) of Baltimore had arrested, the Secretary of State, Mr. Seward, answered him in the following words: "Can it be hoped that the Government of the United States should crush the treason in arms, and leave, nevertheless, at liberty, persons capable of diffusing a popular commotion? The Government could not with certainty hope to sustain itself if it would permit American citizens such injurious liberties. Could there be any difference when the dangerous person is a foreigner who lives under the protection of the Government? But one reason could be considered as conceivable for setting this person at liberty, namely, that he is a person too insignificant and too passionate to attract attention by his actions against the Government."

Moreover, you must bear in mind that in this critical time insurrection is easily moved by ill-intentioned men, who in time of peace would be despised.

It could be gathered thus, from all that is said above, that the answer, which by order of the provisional president I transmitted to you under date of the 6th instant, is fully justified. To finish and to return to the point relative to the diplomatic protection in Jaurett's case, it is well to make manifest that the rules and principles adopted by the Government of the Republic do not differ at all from those so admirably formulated by the Secretary of State, Mr. Webster, in his communication to Mr. Peyton under date of January 6, 1842: "A citizen of the United States who finds himself in a foreign country and takes part in attempts against its government has lost thereby his rights or protection from his own Government."

I take, etc.,

GUST. J. SANABRIA.

The Secretary of State to Minister Bowen.

No. 231.] DEPARTMENT OF STATE,
Washington, January 5, 1905.

SIR: I have to acknowledge the receipt of Mr. Hutchinson's No. 375, of the 17th ultimo, reporting his efforts to induce the Venezuelan Government to pay the indemnity claimed on account of the expulsion of Mr. A. F. Jaurett.

The Department hopes that you will continue to press the matter upon the Venezuelan Government.

I am, etc.,

JOHN HAY.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 12, 1905.

You are authorized to conclude following protocol Bermudez matter. Important; insist upon immediate restoration of property. Cable results.

LOOMIS.

Protocol of agreement between the United States of America and the United States of Venezuela, for the submission to arbitration of all questions between the Venezuelan Government and the New York and Bermudez Company, a corporation under the laws of the State of New York and a citizen of the United States.

Whereas differences have existed and still exist between the Venezuelan Government and the New York and Bermudez Company, especially in relation to the asphalt mine or deposit commonly called Bermudez Lake, in the State of Bermudez, in Venezuela; and

Whereas in July last, on process issued by the federal and cassation court of Venezuela, at the suit of the Venezuelan Government, the said mine or deposit was, together with all its works and appurtenances, sequestrated and taken from the possession of the New York and Bermudez Company, against the protest of the Government of the United States as well as of the company; and

Whereas it is desired, in the interest of justice and harmonious relations between the two countries, to put an end to all differences between the Venezuelan Government and the said company, at once and finally, by means of an international arbitration:

Now, therefore, the United States of America and the United States of Venezuela, through their respective representatives,—— ——, and —— ——, have agreed upon the following articles:

ARTICLE I.

All differences heretofore or now existing between the Venezuelan Government and the New York and Bermudez Company, and all claims on either side arising therefrom, whether such claims have been diplomatically presented or not, shall be referred to and shall be decided by a board of three arbitrators, one to be named by the President of the United States, one by the President of Venezuela, and the third by the President of the United States and the President of Venezuela jointly, within sixty days.

In case of the death, absence, or incapacity of any arbitrator, or in the event of his ceasing or omitting to act, the vacancy shall be filled in the same manner as the original appointment, the period of sixty days to be calculated from the date of the happening of the vacancy.

ARTICLE II.

The arbitrators shall meet in the city of Washington, within sixty days after the date of the appointment of the third arbitrator.

The vote of two arbitrators shall suffice for the decision of all questions submitted to the tribunal, including the final award.

ARTICLE III.

Within six months after the signature of this protocol each party shall present to the other and to its agent, and also to each of the arbitrators, two printed copies of its case, accompanied with the documents and evidence on which it relies, together with the affidavits of their respective witnesses.

Within a further period of four months either party may, in like manner, present a counter case, with additional documents and evidence and affidavits in reply to the case, documents, and evidence of the other party.

If either party shall, in its case or counter case, refer to any document in its exclusive possession, without annexing a copy, it shall, upon the request of the other party, furnish the latter with a copy; and either party may call upon the other through the arbitrators to produce the originals or certified copies of any papers adduced as evidence.

ARTICLE IV.

Within four months after the expiration of the term allowed for the filing of counter cases each Government may, by its agent as well as by additional counsel, argue its cause before the arbitrators, both orally and in writing. Each side shall furnish to the other copies of any written arguments, and each party shall be at liberty to make a written reply, provided that such reply be submitted within the four months specified.

ARTICLE V.

All proceedings, whether judicial or administrative, pending against the New York and Bermudez Company, at the suit of the Venezuelan Government, shall be immediately discontinued, and the award rendered under the present protocol shall be accepted as a conclusive determination of all questions involved in said proceedings and of any and all rights of said company in Venezuela, under its concessions and deeds, or otherwise, including indemnity for any violation of said rights.

The company shall be immediately restored to the possession and enjoyment of Bermudez Lake, its works and appurtenances, as fully as before the late sequestration, and shall be permitted to remain in such possession and enjoyment, subject only to the decision of the arbitrators, and the Venezuelan Government shall so far as possible restore to the company all asphalt and other property taken from it at and since the order of sequestration, and shall give all aid to the company in tracing and recovering all such asphalt and other property as may have passed out of said Government's immediate control.

ARTICLE VI.

The New York and Bermudez Company shall be permitted freely to seek and to obtain the testimony of witnesses, through agents of its own selection, whether Venezuelans or foreigners, in any part of Venezuela. Such agents shall not be obstructed, threatened, or harassed, nor shall any person be hindered or deterred from giving testimony in behalf of the company, or be made in any way to suffer by reason of having given such testimony. The company shall also be permitted freely to communicate by cable, as well as by other means, with its representatives and agents in Venezuela.

ARTICLE VII.

The award of the tribunal shall be rendered within fifteen months from the date of the signature of the present protocol. It shall be in writing and shall be final and conclusive.

ARTICLE VIII.

Reasonable compensation to the arbitrators for their services and all expenses incident to the arbitration, including the cost of such clerical aid as may be necessary, shall be paid by the two Governments in equal moieties.

Done in quadruplicate, in English and Spanish, at ——, this —— day of ——, 1905.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS, *January 13, 1905.*
(Received 5.28 p. m.)

This morning I presented to the minister for foreign affairs the protocol with a note in which I insisted on the immediate restoration to the asphalt company of its property. The minister said your Government in its cable instructions to you accepted the offer of the Venezuelan Government to submit to arbitration all questions which, being of a diplomatic character, can not be settled by mutual consent, and I understand therefore that you would present a protocol general in character covering all pending questions. He promised to answer in writing. I judge he will object to change the agreement.

BOWEN.

The Acting Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 16, 1905.

Referring to your cablegram January 13, Department does not understand that there are any cases for arbitration other than the Bermudez case and possibly the Crichfield, Jaurett, and Olcott cases. The Department is considering the three latter cases. Advise Department what other claims or questions there are for arbitration. Department understands the offer of 5,000,000 bolivars annually to apply to claims already adjudicated. In order to make satisfactory arrangements with other interested governments the United States Government would have to take over the custom-houses of Puerto Cabello and La Guayra and appropriate the 5,000,000 bolivars annually to payment of adjudicated claims of all the creditor States, handing over the residue to the Venezuelan Government. If this arrangement is made Department will endeavor to effect satisfactory arrangement with all creditor States. Department would be willing to submit all other claims and questions which admit of arbitration to the same tribunal that tries the Bermudez case. If this is agreed to by Venezuela furnish list of all claims you know of and Department will prepare protocols of submission to the same tribunal mentioned.

LOOMIS.

Minister Bowen to Secretary of State.

[Telegram.]

CARACAS, *January 19, 1905.* (Received.)

By an official letter which I received from the minister for foreign affairs last night, I am given to understand:

First, that the President of Venezuela will not agree to pay the 5,000,000 bolivars to the allied and peace powers.

Second, that pending diplomatic questions do not include questions before the Venezuelan courts.

Third, that Venezuela is willing to make a permanent arbitration treaty, and to submit to a tribunal whether, according to international law, a question can be considered a diplomatic question that is pending in a national court. In other words, the President will not agree to submit the Bermudez case to arbitration until a tribunal decides that it is a diplomatic question.

The President evidently considers the discussion ended, as he has gone to Maracay for ten days. I am also of opinion that it should be considered ended.

BOWEN.

Minister Bowen to Secretary of State.

[Telegram.]

CARACAS, *January 27, 1905.*
(Received 4.25 p. m.)

The Venezuelan Government was astounded to receive the protocol about Bermudez case after being assured in conformity with your

cable of the 10th that you would send bases protocol for arbitration of all disputed claims. Minister for foreign affairs says he sent the correspondence as to the matter to Washington by last mail. The Venezuelan Government evidently think your said cablegram was an invention of mine. The newspapers here are rapidly strengthening the cause of the President, and increasing daily number who would resist the United States.

BOWEN.

The Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 28, 1905.

Try to get Venezuelan Government to agree to the principle of an impartial arbitration of the cases of Bermudez Company, Crichfield, Jaurett, and of the revision of the Olcott award, and the trial of all these cases absolutely on their merits. If Venezuelan Government will accept the principle above stated, you may conclude protocol sent you in the Bermudez case and Department will send you protocol for the other cases, and all can be submitted to the same tribunal.

HAY.

Minister Bowen to Secretary of State.

[Telegram.]

CARACAS, *January 30, 1905.*
(Received 10.40 a. m.)

I have sent a note to Venezuelan minister for foreign affairs asking if his Government will agree to the principle of an impartial arbitration of the four cases, and suggesting if it will not that it propose to the Government of the United States that a tribunal of arbitration be selected to declare whether these and other cases of other nations are diplomatic questions and to hear and to decide them if they are, and to fix the amount that ought to be paid out of the customs revenues to the creditor nations.

BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *February 1, 1905.*
(Received 1.20 p. m.)

My note of the 30th may not be answered until the President returns February 4. I suggested Venezuela should propose to submit to arbitration whether the cases are diplomatic in order to show that if suggestion was declined peaceable settlement is impossible, and to offer to you an opportunity, if it is accepted, to deal a deathblow to the pernicious Calvo doctrine, and to secure justice for all of the creditor nations and an equitable sum from the customs revenues.

May I await the answer to my note before advising Venezuela Government? Your instructions to me contemplated arbitration simply of our own four cases, and should that declaration be made if Venezuelan Government rejects my suggestion?

BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, VIA HAITI, *February 2, 1905.*

I have just received the answer to my note. The President declines to arbitrate our four American cases and to submit to arbitration whether pending questions are diplomatic or not and, finally, to permit a tribunal or arbitration to fix the sum that should be paid out of the custom revenues. He asks again for a treaty of arbitration for settling questions that may become diplomatic.

BOWEN.

The Acting Secretary of State to Minister Bowen.

No. 238.] DEPARTMENT OF STATE,
Washington, February 3, 1905.

SIR: I inclose a copy of a letter from Messrs. Ralston & Siddons in behalf of the Orinoco Corporation, who represent that for a long time past the corporation has been forcibly excluded from the mines of Imataca, which it held under a concession from the Government of Venezuela, and that the Government of Venezuela, although bound by article 3 of the said concession to establish two ports of entry at such ports of the colony mentioned in the concession as might be judged suitable, abolished the ports in question shortly after their establishment, in violation of the terms of the concession.

You will use your good offices with the Government of Venezuela, as requested in the paragraphs numbered one and four of Messrs. Ralston & Siddons' letter, namely:

"1. That two ports of entry may be at once reestablished within the colony in accordance with article 3 of said concession;" and "4. That Mr. Dolge, or other representative of the Orinoco Corporation, be permitted, without interference, to proceed directly to Santa Catalina, and to enter and depart freely from such point or other points within the limits of said concession without being obliged to first proceed to any port of entry."

The Department reserves for further consideration the paragraphs numbered two and three of that letter, requesting:

"2. That article 8 of said concession may be carried out by the Government of Venezuela through the separate organization of the political, administrative, and judicial system of the colony, it being at once severed from the State of Guyana;" and "3. That such steps may be taken by the Government as will result in the setting aside of the denouncements and grants hereinbefore referred to made in violation of the terms of said concession."

I am, etc., FRANCIS B. LOOMIS,
Acting Secretary.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *February 3, 1905.*
(Received 9.45 p. m.)

The President asks for a general treaty of arbitration for settling questions that may become diplomatic in accordance with the rule of international law. Do you wish me to decline foregoing request, or to inform the Venezuelan Government that the Government of the United States could not agree to submit to arbitration whether or not pending questions are diplomatic?

BOWEN.

Mr. Hay to Minister Bowen.

[Telegram.]

WASHINGTON, *February 3, 1905.*

The suggestion that the United States enter into a treaty of arbitration to determine what questions may become diplomatic can not be taken seriously. You will so inform the Venezuelan Government.

It is desirable to use cipher in communicating with Department.

HAY.

Minister Bowen to Secretary of State.

[Telegram.]

CARACAS, *February 5, 1905.*
(Received 1.14 p. m.)

Venezuelan chargé d'affaires cabled the President yesterday that you said the difficulties with Venezuela could be arranged. The President cabled for details. Venezuelan chargé d'affaires replied that you asked him why does not the President accept a general arbitration treaty, adding, if he would all would be settled amicably and Venezuela would never have a better friend than the United States. The President cabled back to tell you that he never asked for anything except to submit everything to arbitration, but that I prevented everything. That statement is false. He refused to submit to arbitration pending questions and asked for a general arbitration for the future. Your instructions to me stated the United States would consider negotiating a general arbitration treaty only after pending questions are settled. As the President claims cases before his courts are not diplomatic questions, it would be useless to make a general arbitration treaty unless he accepts our definition of diplomatic question.

BOWEN.

Minister Bowen to Secretary of State.

No. 385.] AMERICAN LEGATION,
Caracas, February 5, 1905.

SIR: I have the honor to inclose herewith copies of my correspondence with the minister for foreign affairs, and of the cablegrams that

have passed between Washington and this legation, since the 23d of January last, and to acknowledge the receipt of your instructions, No. 234, of the 20th ultimo. I am holding the said instructions until I receive an answer from you to my cablegram of the 3d instant, asking whether or not you desire me to decline the request of President Castro for a general treaty of arbitration. I am decidedly of the opinion that we should not make a treaty with him of that kind until he settles all pending questions in conformity with our repeated requests and consents to accept our definition of what are diplomatic questions. His evident purpose is to maintain the Calvo doctrine in its entirety, and he has no doubt he can do so if he can persuade the Government of the United States to agree to make Venezuela a general treaty of arbitration for settling questions that may become diplomatic in accordance with the rules of international law. As he knows that I understand his purposes perfectly, he hopes, through his polite chargé d'affaires at Washington, to convince you that his efforts have always been directed toward arbitration, but that I have thwarted them. My correspondence with his Government proves that he does not want any honest kind of arbitration, and would not accept it. I believe, therefore, that force will have to be used.

I am, etc.,

HERBERT W. BOWEN.

P. S.—I have just had a talk with General Ybarra, the minister for foreign affairs. He told me that he has cabled to Washington in the hope of securing your assent to the making of a general arbitration treaty. I expressed the opinion that he would not succeed unless he is willing to submit to arbitration the asphalt case and all other pending cases that can not be settled by mutual consent. He replied that President Castro is anxious to make only one treaty, and to have that cover everything. "That might be possible," I remarked, "if he really would let it cover everything; but, so far, he has excluded everything. Send for me the moment he consents to submit the asphalt case and all other questions to arbitration, and we will then see what we can do."

General Ybarra's remarks, being interpreted, mean that President Castro expects the United States to yield. As it is he who has done the wrong, it is he who should yield, or be made to yield.

H. W. B.

No. 1.

Mr. Loomis to Mr. Bowen.

[Cablegram received January 28, 1905, at 7.30 p. m.]

Try to get the Venezuelan Government to agree to the principle of an impartial arbitration of the cases of the Bermudez Company, Critchfield, Jaurett, and of the revision of the Olcott award and the trial of all those cases absolutely on their merits.

If the Venezuelan Government will accept the principle above stated, you may conclude protocol sent you in the Bermudez Case, and the Department will send you protocol for the other cases, and all can be submitted to the same tribunal.

LOOMIS.

No. 2.

Mr. Bowen to Minister for Foreign Affairs.

AMERICAN LEGATION,
Caracas, January 30, 1905.

MR. MINISTER: I have the honor, in compliance with instructions I have received from Washington, to request your excellency to inform me whether the Government of Venezuela is willing to agree to the principle of an impartial arbitration of the asphalt case, the Critchfield and Jaurett cases, and the revision of the Olcott award, and of the trial of all those cases absolutely on their merits before arbitrators appointed to hear and to decide them.

A favorable answer to that question would, in my opinion, be indisputably creditable to the Government of Venezuela and surely acceptable and gratifying to the Government of the United States.

The only reason, if I understand clearly the views of the Venezuelan Government, why it has hesitated to submit the asphalt case and similar cases to arbitration, is because it is inclined to hold that while cases are before the Venezuelan courts they can not be considered diplomatic questions, and that they can only become such after the courts have rendered their final decision in such a way or in such terms as to constitute a denial of justice.

If the Venezuelan Government is deterred by those views from submitting to arbitration the aforesaid cases, or any of them, I suggest that it propose to the Government of the United States that an arbitration tribunal be selected and authorized to declare whether or not the aforesaid cases, or any of them, may be properly regarded as diplomatic questions, and to hear and to decide such of them as are diplomatic questions.

It would not be practical, nor is it necessary, to submit to arbitration the general principle of international law that a case pending in a national court is not a diplomatic question. We are not discussing a general principle, but specific cases, and these specific cases can, in my opinion, be shown to be wrongly referred to the aforesaid general principle.

Furthermore, I suggest that Venezuela at the same time propose that the same arbitration tribunal be authorized to hear and decide such cases of the other creditor nations as it may declare are diplomatic questions, and may decide what sum should be paid yearly to the creditor nations out of the customs revenues of La Guaira and Puerto Cabello.

I have made these suggestions in order that I may never be reproached with having failed to put forth every effort possible to induce the Government of Venezuela to settle in a fair and honorable way her disputes with foreign nations. Your excellency will appreciate my friendly motives, and will, I know, give to every view I have expressed very careful and conscientious consideration.

I gladly, etc.,

HERBERT W. BOWEN.

No. 3.

Mr. Bowen to Secretary of State.

[Cablegram sent January 30, 1905, at 7 a. m.]

I have sent a note to the Venezuelan minister for foreign affairs, asking whether his Government will agree to the principle of an impartial arbitration of the four cases, and suggesting, if it will not, that it propose to the Government of the United States that a tribunal of arbitration be selected to declare whether these and other cases of other nations are diplomatic questions, and to hear and to decide them, if they are, and to fix the amount that ought to be paid out of the customs revenues to the creditor nations.

BOWEN.

Mr. Bowen to Secretary of State.

[Cablegram sent February 1, 1905, at 8 a. m.]

My note of the 30th may not be answered until the President returns February 4. I suggested Venezuela should propose to submit to arbitration whether the cases are diplomatic, in order to show that if suggestion was declined peaceable settlement is impossible, and to offer to you an opportunity, if it is accepted, to deal a death-blow to the pernicious Calvo doctrine, and to secure justice for all of the creditor nations and an equitable sum from the customs revenues. May I await the answer to my note before advising the Venezuelan Government that your instructions to me contemplated arbitration simply of our own four cases, and, should that declaration be made, if the Venezuelan Government rejects my suggestion?

BOWEN.

No. 4.

Mr. Loomis to Minister Bowen.

[Cablegram received January 31, 1905, at 12.30 p. m.]

Department's telegram of January 28 only contemplated arbitration of four cases mentioned on their absolute merits. It could not agree to submit to any national tribunal to decide whether any question is or is not a diplomatic question. That would be an innovation. When cases are submitted to arbitration on their merits only, if the tribunal decides adversely to any claimant that would show that there ought not to have been intervention in that particular case, and hence that that was not properly a diplomatic question, but if the tribunal decides in the favor of any particular claimant, that shows that diplomatic intervention was just in that case. The United States Government could not agree with any government to submit to a tribunal the power to pass on its exercise of the discretionary right of diplomatic intervention. So advise the Venezuelan Government, and limit the proposed arbitration to terms stated in Department's telegram of January 28.

LOOMIS.

Minister Bowen to Secretary of State.

[Cablegram sent February 1, 1905, at 8 a. m.]

My note of the 30th may not be answered until the President returns February 4. I suggested Venezuela should propose to submit to arbitration whether the cases are diplomatic, in order to show that if suggestion was declined peaceable settlement is impossible, and to offer to you an opportunity, if it is accepted, to deal a death blow to the pernicious Calvo doctrine, and to secure justice for all of the creditor nations and an equitable sum from the customs revenues. May I await the answer to my note before advising the Venezuelan Government your instructions to me contemplated arbitration simply of our own four cases, and should that declaration be made if the Venezuelan Government rejects my suggestion?

BOWEN.

No. 6.

Mr. Loomis to Minister Bowen.

FEBRUARY 2, 1905. (Received at 4 p. m.)

The Department unable to submit to arbitration the question whether cases are or are not diplomatic, but you may use your discretion about communicating our position to the Venezuelan Government.

LOOMIS.

No. 8.

Minister for Foreign Affairs to Mr. Bowen.

MINISTRY FOR FOREIGN AFFAIRS,
Caracas, February 2, 1905.

Mr. MINISTER: I acknowledge the receipt of your excellency's note of the 30th of January last, and I have received instructions from the provisional President of the Republic to answer, in order, the points which it contains in the following terms:

The asphalt cases have been fully answered in previous notes to your excellency from this office by it being stipulated in such contracts between the interested parties and the Government of the Republic that doubts and controversies which may arise in the execution and fulfillment should be decided by the tribunals of justice of the Republic, there not being able to be in any case grounds for international claims; and now your excellency, who is a jurist, will understand that it would not be creditable for the Venezuelan Government to violate the said proviso agreed upon with American citizens or companies.

The Jaurett matter is a mere police question, and as to the revision of the award of Mr. Olcott, although it is not known that any protest about the matter has been made by him, the case, in the opinion of the

Federal Executive, would be of such gravity, if it were made that in his judgment all the protocols would be annulled which your excellency signed in Washington in the name and as the representative of Venezuela.

Nothing creditable would then result to the Government of the Republic from its acceptance.

If a judicial question can be taken away from the competent tribunals which have cognizance thereof, in order to be submitted to a diplomatic decision, as your excellency has affirmed already in your various notes, the Venezuelan Government would not be indisposed to accede to your repeated request, provided, always, this principle were thus sustained, maintained, and embodied in international law.

The Government of the Republic has not been able, even remotely, to foresee the denial of justice, because the cases in court are of such a character that they are not susceptible to it, nor much less would it be acceptable to the Federal Executive if the honor and dignity of the nation were involved.

Your excellency knows, by the contents of previous notes from this office, that the Venezuelan Government has proposed, in every way, to the Government of the United States a general arbitration treaty for all the questions which in due international form can be thus decided. And as regards this paragraph of the note of your excellency which I am answering, the President observes, moreover, that the very fact of submitting to an arbiter the decision as to whether the question is diplomatic or not would be not only a proof that it was not, but even prejudicial to the exact investigation of the questions by the chancelleries that discuss them. Nor is it understood that the special cases to which your excellency refers can be governed by other principles or other rules than general ones.

The next paragraph o your excellency's note is of such magnitude and gravity that, dealing with your excellency, I have to say that the Federal Executive hardly can understand it or explain it, as your excellency, as former representative of Venezuela, ought to know what sum is the one which from the date of the protocols is being paid to all the creditor nations, or to all the nations which signed with her diplomatic agreements. The point which the Government of the Republic could not settle—that is to say, preferential treatment—your excellency knows the award of The Hague tribunal decided it clearly and categorically, and thus it has been observed and fulfilled by the Government of Venezuela.

If any new rule or agreement in the form of payment, but not as to the amount, could be obtained by the Government of the United States with the other nations for the Government of Venezuela, said payment would be equally acceptable. I have to inform your excellency anew that the Venezuelan Government has no pending questions of any kind in relation to what your excellency embodies in the paragraph to which I have just alluded.

I have special instructions from the provisional President of the Republic to give to your excellency at all events the most cordial thanks for your good offices and desires, and avail myself of the opportunity, etc.

ALEJANDRO YBARRA.

No. 9.

Minister Bowen to the Secretary of State.

[Cablegram sent February 2, 1905.]

I have just received the answer to my note. The President declines to arbitrate our four American cases and to submit to arbitration whether pending questions are diplomatic or not, and finally to permit a tribunal of arbitration to fix the sum that should be paid out of the customs revenues. He asks again for a treaty of arbitration for settling questions that may become diplomatic.

BOWEN.

Minister Bowen to Secretary of State.

[Cablegram sent February 3, 1905, at 6 p. m.]

The President asks for a general treaty of arbitration for settling questions that may become diplomatic in accordance with the rules of international law. Do you wish me to decline the foregoing request, or to inform the Venezuelan Government that the Government of the United States also could not agree to submit to arbitration whether or not pending questions are diplomatic?

BOWEN.

No. 10.

Mr. Hay to Minister Bowen.

[Cablegram received February 3, 1905, at 3 p. m.]

The suggestion that the United States enter into a treaty to determine what questions may become diplomatic can not be taken seriously. So inform the Venezuelan Government. It is desirable to use cipher in communicating with the Department.

HAY.

Minister Bowen to the Secretary of State.

[Cablegram sent February 3, 1905, at 6 p. m.]

The President asks for a general treaty of arbitration for settling questions that may become diplomatic in accordance with the rules of international law. Do you wish me to decline the foregoing request, or to inform the Venezuelan Government that the Government of the United States also could not agree to submit to arbitration whether or not pending questions are diplomatic?

BOWEN.

No. 11.

Minister Bowen to the Secretary of State.

[Cablegram sent February 5, 1905, at 8 a. m.]

The Venezuelan chargé d'affaires cabled the President yesterday that you said the difficulties with Venezuela could be arranged. The President cabled for details. The Venezuelan chargé d'affaires replied that you asked him, "Why does not the President accept a general arbitration treaty?" adding, "If he would, all would be settled amicably, and Venezuela would never have a better friend than the United States." The President cabled back to tell you that he has never asked for anything except to submit everything to arbitration, but that I prevented everything. That statement is false. He refused to submit to arbitration pending questions, and asked for a general arbitration treaty for the future. Your instructions to me stated that the United States would consider negotiating a general treaty only after pending questions are settled. As the President claims cases before his courts are not diplomatic questions, it would be useless to make a general arbitration treaty unless he accepts our definition of "diplomatic questions."

BOWEN.

Mr. Hay to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, February 6, 1905.

Venezuelan chargé was informed there could be no settlement which did not provide for prompt arbitration of pending questions. He was distinctly told that a general arbitration treaty as proposed by Venezuelan Government would be unacceptable at this juncture.

HAY.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS.
(Received February 10, 1905—11.56 a. m.)

On the 6th I answered the last note of minister for foreign affairs by stating simply that the United States declines to make any settlement which does not provide for prompt arbitration of pending questions and that general arbitration treaty unacceptable at this juncture. Venezuelan Government has not replied except by fortifying mountain passes to the coast and sending extra forces and ammunition to La Guayra.

BOWEN.

The Secretary of State to Minister Bowen.

[Telegram.]

DEPARTMENT OF STATE,
Washington, February 13, 1905.

Take no action whatever in Crichfield or the United States and Venezuelan Company case until further instructed.

HAY.

Mr. Bowen to Secretary of State.

[Telegram.]

CARACAS.
(Received February 15, 1905—5.38 p. m.)

The court to-day confirmed sequestration Bermuda property.

BOWEN.

Secretary of State to Mr. Bowen.

No. 242.] DEPARTMENT OF STATE,
Washington, March 10, 1905.

SIR: I have to acknowledge the receipt of your No. 385, of the 5th ultimo, in regard to the pending negotiations between the United States and Venezuela.

In reply I have to say that the Department approves your opinion that we should not make a general arbitration treaty with Venezuela until all pending questions between the two governments have been settled in conformity with the Department's instructions heretofore given. In the light of President Castro's statement to you, contained in the note of the minister of foreign affairs of February 2, "the very fact of submitting to an arbiter the decision as to whether a question is diplomatic or not would be not only a proof that it was not, but even prejudicial to the exact investigation of the questions by the chancelleries that are to discuss them." This language of the President completely demonstrates the futility of proposing or discussing the formation of an arbitration treaty for the purpose of deciding the question whether a case is diplomatic or not. In short, the language quoted shows the inability of this Government to accede to any arbitration of the question proposed.

Taking the Bermudez Asphalt Company case as an example, if the question were submitted to a tribunal to decide whether or not the case is diplomatic, it would involve the presentation before an international tribunal of many details in connection with prosecutions instituted against the Bermudez company which this Government would wish to be spared the necessity of presenting. Incidents such as have characterized the successive prosecutions of the Bermudez company were fully considered by the Department of State before it determined whether or not the Government ought to intervene with the Venezuelan Government for the protection of the company. Once its decision to intervene is taken and an arbitration

arranged, the case then goes to the tribunal on its merits and it would be very inconvenient, since it might lead to recriminations creating resentments, if the intervening government had to show the many serious charges and proofs adduced that the executive had overawed the courts; and by removals and imprisonments of judges and of attorneys, and by interposing other obstacles to the due and impartial administration of justice, had thus finally convinced the intervening government of the propriety and necessity of its action. Expositions and discussions of this nature would not conduce to the maintenance of that mutual respect and friendship which should continue in spite of serious controversies between differing governments.

The revision of the Olcott award could not have the serious consequences supposed in the note of the minister addressed to you on February 2. The protocol for the revision of that award would be so drawn that the action of the reviewing tribunal would have no effect on the previous protocol and awards. It would have the effect, however, and this the Department asks, that the tribunal might fairly and fully reconsider the whole case and render to Mr. Olcott that justice which appears to have been denied by the award given under the previous protocol.

The attitude of the Venezuelan Government toward the Government of the United States and toward the interests of its citizens who have suffered so grave and frequent wrongs arbitrarily committed by the Government of Venezuela require that justice should now be fully done, once for all. If the Government of Venezuela finally declines to consent to an impartial arbitration, insuring the rendition of complete justice to these injured parties, the Government of the United States may be regretfully compelled to take such measures as it may find necessary to effect complete redress without resort to arbitration. The Government of the United States stands committed to the principle of impartial arbitration, which can do injustice to nobody; and if its moderate request is peremptorily refused it will be at liberty to consider, if it is compelled to resort to more vigorous measures, whether those measures shall include complete indemnification not only for the citizens aggrieved but for any expenses of the Government of the United States which may attend their execution.

You are at liberty to furnish a copy of this instruction to the minister for foreign affairs.

I am, etc., JOHN HAY.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *March 20, 1905.*
(Received 10.24 a. m.)

I have sent to minister of foreign affairs copy of your final proposal of the 10th, and requested answer whether or not Venezuelan Government will accept it.

BOWEN.

Minister Bowen to the Secretary of State.

[Telegram.]

CARACAS, *March 23, 1905.*
(Received 9.08 p. m.)

The Venezuelan Government, in answer to final proposal of arbitration contained in your note of the 10th, denies it has any pending questions with the United States; claims it would be offensive to the honor of the Dutch to revise Olcott case, and maintains there is reason to believe case belongs to Venezuelan courts. Before giving further consideration to your note, the Venezuelan Government states that it must know whether the United States respects methods and nobility of the Venezuelan courts. The answer is unyielding and insolent and requires no further ultimatum.

BOWEN.

Minister Bowen to Mr. Hay.

No. 394.] AMERICAN LEGATION,
Caracas, April 2, 1905.

SIR: I have the honor to inclose herewith a copy of the answer of the minister for foreign affairs to your note of March 10, and a translation of the answer.

As my correspondence with the Government in regard to arbitration ended in an absolute refusal on the part of President Castro to favor any of my suggestions, and was interpreted by him as evidence that I was attempting to impair the good relations existing between the United States and Venezuela, I decided to submit to him a copy of your note of March 10, in order that he might have the opportunity to ponder carefully your views and conclusions, and to answer them without being influenced by any feeling of personal animosity, as he may have been when he replied to my notes.

That he failed to avail himself of that opportunity is very apparent. The whole tone of his answer to your note is exceptionally impetuous and insolent, while the arguments he employs are distinctly disingenuous and obviously absurd.

Hardly had the commission finished their work here before he demanded a revision of the Belgian award; and yet in his note to you he declares that he can not revise the Olcott case "without failing in the respect which is due to that which has been agreed upon." And again, when he states that the asphalt case belongs to the national courts of Venezuela he knows perfectly well that he controls those courts absolutely and that, consequently, they are courts of injustice. In countries where the government is much more respectable than his is the civilized nations have consular courts. The right to appeal for justice and to expect justice is an indisputable and inalienable right, which no civilized human being can allow himself to be deprived of. That right is denied in Venezuela to-day by President Castro; and thus it is that American citizens here look to the Government of the United States for protection. Never mind what wrong our citizens here may do,

they are entitled to insist that they be dealt with legally. Not even to the worst of criminals should injustice be done. And what is true of our citizens is true of the citizens and subjects residing here of all the other civilized nations. They are oppressed and distressed. Complaints innumerable they have made to their respective legations here.

I am, etc.,

HERBERT W. BOWEN.

Minister of foreign relations to Mr. Bowen.

[Translation.]

MINISTRY OF FOREIGN RELATIONS
OF THE UNITED STATES OF VENEZUELA,
Caracas, March 23, 1905.

MR. MINISTER: I limit myself to acknowledging the receipt of your excellency's note of the 19th instant, and of the inclosure of His Excellency Mr. John Hay, of the 10th, because I believe, with good foundation, that the Venezuelan Government has in reality no pending questions with the Government of the United States, it being an evident fact, supported by every kind of evidence, that the Venezuelan Government arranged in Washington, by its proctocol signed in 1903, the subjects that could be matters for discussion, and that were decided by the mixed commission that afterwards met in Caracas.

As, on the other hand, one of the matters which is treated by His Excellency Mr. Hay is found contained in those decisions, which is the same as if we should say that it has already the potency of things adjudicated, and because the Venezulean Government would consider it as an offense to the honor of the Dutch nation and of the Dutch umpire, Mr. Harry Barge, who decided the Olcott claim, acquiescence could not be given to such an unseasonable request without failing in the respect which is due to that which has been agreed upon, and it would be at the same time even a reason for believing that not even a new agreement, judgment, or arbitration could be executed; so with the matter of the New York and Bermudez Company, His Excellency Mr. Hay, ought to know that by its nature it is one of the cases that belong to the ordinary courts of the country, to which the laws now existing remit the case, and to which are subject all those of foreign nationality who come to reside or make contracts here.

The Provisional President of the Republic charges me, then, to say to your excellency, in order that you may in turn communicate it to His Excellency Mr. John Hay, that this Government, in order to consider his note, needs to know, at once and for the aforesaid reasons, whether the matter in question relates to the sovereignty and independence of this Republic—that is to say, whether or not the Government of the United States respects and reveres the legislation of this Republic and the nobility of its tribunals, and whether it respects and reveres equally the agreements and arbitral decision which it, representing the Venezuelan Government, concluded.

I reiterate to your excellency, on this occasion, the assurance of my most distinguished consideration.

ALEJANDRO YBARRA.

The Acting Secretary of State to Chargé Hutchinson.

[Telegram.]

DEPARTMENT OF STATE,
Washington, May 22, 1905.

Inform Department if there has been a recent decision in asphalt case.

LOOMIS.

Mr. Hutchinson to Secretary of State.

[Telegram.]

CARACAS, *May 24, 1905.*
(Received 9.34 a. m.)

Court of first instance gave decision against the New York and Bermudez Company last Saturday on Hamilton concession annulling concession and damages to be assessed by experts. The case will be appealed to full court.

HUTCHINSON.

Mr. Hutchinson to Mr. Hay.

No. 432.] AMERICAN LEGATION,
Caracas, June 22, 1905.

SIR: I have the honor to confirm my cablegram to the Department, dated the 20th instant, and reading as follows:

Court of first instance overrules Bermudas—Bermudez—Company exceptions which claimed incompetency of the court and defect in the form of the demand in revolutionary case.

HUTCHINSON.

As the exceptions taken by the company have been overruled, the case will be proceeded with.

I inclose copy and translation of the decision.

I have, etc.,

NORMAN HUTCHINSON.

[Inclosure to No. 432.]

United States of Venezuela—in their name, the civil division of the court of first instance of the eastern section of the federal district.

The court has seen the proceedings and heard the addresses of the representatives of the parties. On the day and hour fixed for taking the answer to the action instituted by the nation against the New York and Bermudez Company, an incorporated company which has its domicile in Philadelphia, United States of America, and also in this city, to the end that it satisfy the loss and damage occasioned through its participation in the late revolution called "Libertadora," Dr. J. B. Bance, the constituted attorney of the defendant company, took the dilatory exception of incompetency of the court, and defect in the form of the action, the first as a principal and the second as a subordinate objection, and he based them on the following grounds: The first, on that the principal act and the one from which the present action arises is, according to two corresponding judgments delivered on the hearing of the preliminary objection of inadmissibility of the action by this court or by the superior court, that the defendant company had furnished funds and given moral and material support to the "Libertadora" revolution, from the beginning, until the end of the struggle, and that this act, which had been so erroneously estimated by the judges who gave the judgments, and who disregarded the allegations put forward in defense of the com-

pany, took place, according to the terms of the declaration itself, beyond the territory of the Republic, and that the action having been admitted in that form, this court proves to be incompetent.

The second exception is based on the following reasons: That the action has been instituted against the company, to the end that it be condemned to pay the United States of Venezuela for the serious damage caused thereto by its participation in the late "Libertadora" revolution, adding that the amount for said damage should be fixed by experts from data to be furnished at the legal opportunity. And it is also stated in the declaration, that the said revolution, besides the enormous sums which it obliged the Government to expend for the quelling thereof, occasioned considerable hurt to the national treasury, as can be obviously supposed, and as will be proved during the course of the suit. That in treating of a personal action brought by the State for reparation for the like detriment, it is indispensable, in order that the object of the action and the reasons and documents on which it is based should be clearly expressed and determined by means of the necessary explanations and data, as is required by article 242 of the code of civil procedure, to know the amount of those enormous sums, and in what the hurt of considerable importance consists, and all the corresponding accounts should likewise be furnished; and that in the declaration there is not a single item of such expenses, nor is a single explanatory word given of the exceptional damage which can not remain subject to suppositions and conjectures for the defense; nor are there data which can be adduced at any other time or during the course of the suit.

In due time Dr. F. Arroyo Parejo, the attorney-general of the nation, joined issue on these exceptions, alleging that both are improper and contrary to law, and he asked that, as the matter of said exceptions constituted merely a point of law, they should be determined without taking evidence. The constituted attorney of the defendant company having made the like request, the court granted the same, and having, in conformity to the law, considered the motion, now proceeds to pass judgment thereon.

The incompetence of this court has been raised as a principal objection by the constituted attorney of the defendant company, by reason of which should be the proper territory to take cognizance of the action brought, and this being a point which should be made clear in the light of jurisprudence and legal teaching, the court, for the purpose of firmly establishing the present judgment, proceeds to consider it and observes: (1) That the principal act, that is to say, the "Libertadora" revolution, participation in which has been imputed to the defendant company, took place in this Republic, and that it was the result of the measures taken abroad by the representative of the New York and Bermudez Company, and the agreement made between the latter and the leader of the said revolution: (2) that in the declaration of the action it is not stated that the fact from which the action arises took place beyond the territory of the Republic, since it is therein said "that as the result of the measures of the defendant company, in Europe, the sadly celebrated steamer *Banrigh*, the history of whose piratical depredations is well known to all, appeared off the coasts of Venezuela, armed for war, with abundance of material, and having the leader of the revolution on board: (3) that that point was *not* submitted to the courts which passed on the exception of inad-

missibility and therefore they could not have given any decision thereon; and

Whereas that act from which the action brought is made to be derived having been committed in Venezuela, this is the competent court to take cognizance of the action instituted by the nation against the New York and Bermudez Company;

And whereas in conformity with the second case of article 101 of the code of civil procedure, even those who are not domiciled in the Republic can be sued before the courts thereof when the acts in question took place within its territory, including therefore all responsibilities that arise from crimes or misdemeanors;

And as to the exception to the form of the action the court finds that the estimation of the loss and damage from failure to execute contracts or from the commission of crimes and misdemeanors should be made by the judge in accordance with equity and the evidence adduced, as is determined by article 185 of the code of civil procedure, and when he can not estimate them from the evidence, the law provides that the estimation should be made by experts, which clearly indicates that the claimant in the suit should not and can not make the estimation beforehand, and that he is only obliged to prove them;

And whereas the exception of defect in the form of the action is only proper when some of the requisites prescribed by article 242 of the code of civil procedure have not been complied with, and in the present case all seem to have been complied with:

For these reasons, administering justice by authority of law, the court disallows the exceptions of its incompetence and defect in the form of the action, taken by the constituted attorney of the New York and Bermudez Company, and makes no special order as to costs.

Given, sealed, and signed at the audience hall of this court, at the Yellow House, in Caracas, this 9th day of June, 1905, year ninety-fourth of the independence and forty-seventh of the federation.

P. HERMOSO TELLERIA.
VICENTE E. VELUTINI, *Secretary.*

Chargé Hutchinson to the Secretary of State.

[Telegram.]

CARACAS, VIA HAYTI,
Received August 2, 1905.

Final argument on the Hamilton concession called for, which means that final decision is expected this month and possibly by August 11. Advise Bermudez Company.

HUTCHINSON.

Chargé Hutchinson to the Secretary of State.

[Telegram.]

CARACAS, *August 8, 1905.*

Final decision Hamilton suit yesterday confirms all the points of the lower court, including costs. Advise Bermudez Company.

HUTCHINSON.

Chargé Hutchinson to the Secretary of State.

[Telegram.]

CARACAS, *August 8, 1905.*

Bermudez Company manager files formal protest with the legation of the United States. Claims absolute denial of justice.

HUTCHINSON.

Chargé Hutchinson to the Secretary of State.

No. 468.] AMERICAN LEGATION,
Caracas, August 13, 1905.

SIR: I have the honor to confirm my two cablegrams of the 8th instant, which read as follows:

Final decision Hamilton suit yesterday confirms all the points of the lower court, including costs. Advise Bermudez Company.

HUTCHINSON.

Bermudez Company manager files formal protest with the legation of the United States. Claims absolute denial of justice.

HUTCHINSON.

Referring to the first cablegram above given, I have to report that the decision was known to me on the afternoon of the 7th, but I had not yet seen the printed copy of the decision in the Official Gazette (copy and translation inclosed), so did not cable the Department until the morning of the 8th.

The manager of the company, Captain Wright, asked me to have the company advised of the decision through the Department, and this was fortunate, as the cablegram which Captain Wright sent was stopped by the fiscal in La Guaira, although a translation of its contents was given him. This, as the Department knows, is not the first time that the company's cablegrams have been stopped

Referring to the second cablegram above given, I have to report that the company's manager filed with me on the morning of the 8th instant two copies of a written protest, in the name of the company, protesting against the decision as being an absolute denial of justice and as being contrary to the evidence, the facts, and the law. This protest is addressed to me, as chargé d'affaires of the United States, and is accompanied by various documents and translations sustaining it. The action of the Government of Venezuela, its attorney-general and his agent, and the actions of the lower and higher courts are protested against. The manager also protests against the stoppage of his cablegram by the Government fiscal. The said protest was signed and sworn to before me, in the American legation, on the 8th instant, and bears my legal authentication. (Copy of the said protest inclosed with accompanying documents and translations.)

As the Department has sent me no instructions in connection with the company's protest, I have not made protest to the Venezuelan Government, as I conclude Mr. Russell and Mr. Calhoun will arrive at a proper time and with full instructions.

In conclusion, I beg to point out that it is now nine months since the Department instructed me by cablegram to use all my efforts in inducing this Government to hasten the final decision in this case, which the federal and cassation court has just rendered.

I have, etc.,

NORMAN HUTCHINSON.

The federal and cassation court.

The United States of Venezuela—in their name, the tribunal of the only and last instance of the federal and cassation court.

With the pleadings of the parties, the trial concluded. In virtue of the appeal lodged by the New York and Bermudez Company against the judgment of the 20th of May of the present year, pronounced by the tribunal of the first instance of the federal and cassation court, the records have come to this tribunal. On the 20th of the month of July of the preceding year the attorney-general of the nation sued the New York and Bermudez Company, in the person of its representative, Robert Kemp Wright, that it should agree to the cancellation of the contract that the ministry of fomento of Venezuela, by order and authority of the President, concluded on the 15th of September, 1883, with Mr. Horatius R. Hamilton, to which contract additions were made on the 19th of October the same year and on the 30th of May, 1884, approved by the National Congress on the 6th of June, 1884, and of which the above-mentioned company is the cessionary. The attorney-general also sued for the payment of damages caused by the nonexecution of said contract according to a just estimation by experts, calculated in accordance with the terms established by the first additional article, and for the expense occasioned by the judicial suit. The plaintiff alleged in his bill that a lease was the question, the matter of which is the enjoyment of all the natural products existing in the public lands of the former State of Bermudez. In virtue hereof, and resting on the voucher and telegram which he inclosed in order to prove that the lease holder had failed to perform improvements to which it was bound, such as the canalization of the rivers of said State, he petitioned in conformity with case 7, article 373, of the code of civil procedure, for the sequestration of the mine which the defendant company exploits at Guanoco, with all the exploitation apparatus and accessories, to answer for the consequences of the suit.

By writ of 21st of July, 1904, the New York and Bermudez Company was summoned, in the person of its legal representative, to answer to the petition, and on the same date the tribunal of the first instance decreed the sequestration sued for, which was performed by the civil judge of the first instance of the section of Cumana and ratified after the legal procedure on the 4th of October, 1904. The tribunal of appeal confirmed, in its turn, on the 15th of February of the present year the last-mentioned decision. When the opportunity to answer to the petition arrived, it was proceeded thereto, in the sitting of the 5th of August of the year 1904, at the hour previously pointed out. The parties being present, after the reading of what was convenient, the managing director of the company presented the answer in writing, authorized by him and Dr. Juan Bautista Bances; he contradicted the action, both as to facts and right, and based his opposition on the following grounds: That the Hamilton contract is not a lease; that the contracting parties never intended to conclude a lease when they executed that contract; that neither of the contracting parties has considered or held it as a lease; that the stipulations of said convention can not be adapted to the rules and consequences of the lease, either in virtue of their form or of their meaning; that all rights granted to Hamilton, excepting that of exploration, are of doubtful and hypothetical exercise, on account of their being conditional; that the results of the contract were aleatory and that it was not the only specimen of analogous concessions; that all the so-called advantages of the company, in case they existed, which is denied, would not vitiate the juridical force of the convention, since the profits obtained are the fruit of prevision and effort; that the obligations contracted have been carefully and most completely complied with both by the assignor Hamilton and the company, and that such compliance therewith is fully proved by an official and express declaration of the Federal executive power of Venezuela; that the obligations said not to have been complied with by the company are not subject to any fixed time and could only be considered as due and demandable after the judicial authority should have fixed a time and this should have expired; that respecting those same obligations he formally opposes the prescription established by article 1909 of the civil code then in force and by article 1964 of the present civil code; that the supposed obligation of canalizing one or more rivers never existed legally for Hamilton or for the company; that if it had existed it would be found that it was an alternative condition and that it was complied with; that, even supposing it to have existed as a simple obligation, it would be found that it was complied with as far as possible; that the company has other titles, in virtue of which the asphalt lake, lands, and other appurtenances at Guanoco pertain to it; that the effects of the rescissory condition have not the extent attributed to them by the plaintiff; that the action proposed in the bill, even supposing all the facts adduced to be certain, is held by the company to be contrary to right; that neither Mr. Hamilton when he con-

tracted, nor the company when the Government accepted it as the cessionary of the contract, depended by far (sic) on enormous capital that would further certain illusions and purposes now said to have vanished.

The defendant company vouched Mr. Horatius R. Hamilton, petitioned for the suspension of the course of the suit, and also applied for the extraordinary term granted for the obtaining of evidence, owing to the fact that the New York and Bermudez Company has its direction and general office in the city of Philadelphia. He finally petitioned the action to be declared ungrounded, the company expressly reserving its actions for the damages caused to it by the sequestration. The parties having been invited to conciliation, this was not obtained. It was declared that the petition for the extraordinary term of evidence had been made in due time and the tribunal reserved to itself the legal term to decide as to the voucher and the suspension of the course of the suit, after the decision of which, in virtue of the provisions of article 281 of the code of civil procedure, the cause remained in suspense until, Doctor Bance having withdrawn the voucher, it was declared to be withdrawn, and the suit continued its legal course. The latter being opened to evidence, Dr. Juan Bautista Bance proposed his in two writings of the 4th of October, 1904, and the attorney-general those he thought fit in his writing of the 5th of said month, the respective decisions of the 13th of October, 1904, concerning both the first two writings and the last one being pronounced. Respecting the evidence proposed by Dr. Juan Bautista Bance, the result was that Andres J. Vigas and Ambrose H. Carner declared in Caracas; Jose Vicente Solis, Juan Bosch, and Andres Campos in Guiria; Jose Maria Aristimuno in Maturin; Antonio Cervoni and Laurèano Villalba in Guariquen; Charles Arno in Port of Spain, that No. 7986 of the Official Gazette, of the 25th of July, 1900, in which is inserted a decree issued by the minister of fomento on the 23d of July of the same year, was annexed to the records; that at the ministry of fomento it was certified that from the year 1883 up to the 29th of November, 1904, there have been issued 30 definitive titles to mines of different kinds, situated in the jurisdiction of the former State of Bermudez and several property titles to public lands pertaining to the same State of Bermudez; that the favorable merits of the record, including that of the file of the sequestration, and all the favorable merits shown by the file of the New York and Bermudez Company existing in the archives of said ministry of fomento, were reproduced; that certified copies were obtained from the same ministry of the official communications 374 and 375, addressed to the civil and military chiefs of the former States of Cumana and Maturin, in which official communications the resolution printed in No. 7986 of the Official Gazette was transcribed to those authorities; that the contract concluded on the 12th of February, 1886, with Mr. Cornelio F. O'Brien concerning the supply of wood, which appears on sheets 4, 5, and 6 of the file, was produced; that the collation of the report appearing on sheets 93 to 103 of records No. 3, marked No. 2, undated and signed by Mr. Horatius R. Hamilton, the general manager, was made in Philadelphia, State of Pennsylvania, by the interpreter, Gustavo Navarerete y Romay, which report was produced in a copy before the tribunal to the effects of said collation; that there was produced a pamphlet entitled "The New York and Bermudez Company. The allegation of its rights against an illegal executive resolution issued in January, 1898. The ratification of the titles and concessions by the executive power and the high federal court of the United States of Venezuela,"[a] *for the purpose of obtaining the declarations of Mr. Ambrose H. Carner and Dr. Andres J. Vigas concerning the particulars inserted on sheet 3 of the file.*

With regard to the evidence of the attorney-general, there appear in the records the declaration of Gens. Manuel Guzman Alvarez, Santiago Briceno, A. and Rafeael Velasquez,[a] who at several times have been presidents of the States into which the former State of Bermudez was subdivided, and those of the witnesses enumerated in an attestation proposed by Gen. Luciano Rodriguez before the civil judge of the first instance of the section of Maturin, the last-mentioned declarations having been ratified before the same court conformably to a petition of the plaintiff. There likewise appears on sheets 137 and 138, second page, and 139 of the file, the survey proposed by the attorney-general, with the purpose of establishing that Caño Colorado and the Guarapiche rivers have not been canalized up to the city of Maturin. The plaintiff produced a certification of the auditor-general of the audit office, contained in records No. 2, showing the exportation made by the New York and Bermudez Company up to the 30th of June, 1904. The minister of fomento issued the certification of several documents and acts of the file containing the contract concluded by the National Executive with Mr. Horatius R. Hamilton for the exploitation of natural products in the State of Bermudez. The attorney-general asked, furthermore, to

[a] See protest 7/60.

cross-examine all the witnesses the opposite party might adduce, asked to interrogate the representatives of the opposite party, and alleged the favorable merits of the records.

The cause being fixed, the counsel for the defendant company proposed in his pleadings, as points to be previously decided, that of the incompetency of the tribunal of the first instance of the federal cassation court to pronounce judgment in the suit and the necessity of the self-recusation of that judge.

With such elements the tribunal of the first instance of the federal and cassation court pronounced judgment on the 20th of May of the present year, declaring the admission of the action entered by the attorney-general against the New York and Bermudez Company. This sentence having been appealed, the appeal accepted, and the records removed to this tribunal of appeals, this was formed in conformity with the law, as appearing from the report drawn up on the 7th of July, 1905, after the self-recusation of the vice-president, Dr. Carlos Leon, had been declared lawful, and the second deputy judge, Dr. Fernando Cadenas Delgado, had been called by writ of the 3d of July of the same year. After the case had been examined the parties were called to pleadings. The attorney for the company presented his in writing, which were read, and the opposite party stated that he reproduced those presented by him in the first instance.

In his pleadings the attorney for the company proposes, as a point to be previously decided, the incompetency of this tribunal of appeal, and

Considering:[a]

That the power of the tribunal of the only and last instance to take cognizance of the present litigation is derived from article 11 of the organic code of the federal and cassation court.

Considering:

That article 95 of the national constitution, which attributes to the federal and cassation court the cognizance of the controversies arising from contracts or negotiations concluded by the President of the Republic does not provide for the procedure to be observed in the exercise of that attribution of the court, as such depends on the organic institutions of the latter.

Considering:

That in virtue thereof the collision adduced by the defendant does not exist.

Considering:

That in view of the provision contained in article 10 of the code of civil procedure the tribunals must preferably apply the constitutional precept only when the law in force the application of which is asked collides with that precept.

Considering:

That in the present case the adduced collision does not exist, now, therefore, it is hereby declared that the tribunal of the only and last instance of the federal and cassation court is competent to take cognizance of the present controversy, and, inasmuch as the attorney for the company requires the self-recusation of some judges composing this tribunal, because of their having, according to what he says, given an opinion, the following remarks are relevant:

First. That article 117 of the code of civil procedure provides that judicial officers, whether ordinary, accidental, or especial, may be recused.

Second. That article 119 of the same code prescribes that any judicial officer knowing that some ground for recusation militates against his person is bound to declare it. If the defendant therefore has surrendered the recusation right given it by the law, if the judge has not held himself bound to recuse himself, because he has not found any recusation circumstances to militate against his person, it is indispensable and conformable to law that that judge should maintain his jurisdiction over the case. Therefore, the petition for self-recusation is disallowed.

And, whereas the incompetency of the tribunal and the petition for the self-recusation of the judge were also adduced in the first instance as points to be previously decided, this tribunal of appeal resting on the fact that it finds conformable to the law the grounds on which the tribunal of the first instance rested when it disallowed both the point of the incompetency and that of the self-recusation above mentioned, confirms in all their parts the previous decisions of the tribunal of the first instance of the federal and cassation court.

With regard to the action, considering:

That the cancellation being petitioned for of the contract concluded on the 15th of September, 1883, by the ministry of fomento of the Republic, by order and authority of the President and Mr. Horatius R. Hamilton, of which the New York and Bermudez

[a] See page 16.

Company is the cessionary,[a] *the name that contract may deserve is alien to the character and nature of the action instituted, since* to pronounce a decision as to the latter it sufficed that the said contract is a synallagmatic one, and that one of the contracting parties is said not to have complied with its obligations (art. 1110 of the civil code of 1880).

Considering:

That the above-mentioned contract is a synallagmatic one, since it appears from the examination of its clauses that the parties bind themselves reciprocally. If the Government of Venezuela contracted with Hamilton and his assigns the duties contained in articles 1, 2, 3, 4, 7, of the instrument appearing on sheet 1 of Records No. 1, it in return obtained the rights specified in the same document under numbers 5, 6, and 9, and those contained in the first and second additional articles of the 19th of October, 1883, and the 30th of May, 1884. If Hamilton and his assigns may import duty-free the machinery, implements, and tools required by the exploitation of the products of the State of Bermudez and obtain the right to export asphalt in the same State, Hamilton and his assigns bind themselves to pay to the public treasury 2 bolivars for every 999½ kilogram of asphalt they may export, and 5 centimes of a bolivar for each kilogram of any natural product, Hamilton and, therefore, his assigns bind themselves to canalize, in virtue of the second additional article, one or more of the rivers of the States of Bermudez, beginning by Caño Colorado, Guarapiche as far as Maturin, for the exportation and importation, and the Government grants them in return the *exclusive*[b] *right to navigate the rivers they may canalize*, collecting a tax, to be fixed in concert with the Government, from the vessels or boats that may navigate the same.

Considering:

That the additional clauses were all approved by the National Congress, as appearing from the decree of the 17th of April, 1886, and from the preliminary statement of the ministry of fomento, presented to the Congress of 1885.[c] *The legal validity of those additional clauses has, furthermore, been recognized by the attorney for the company* in the pamphlet entitled, "Defense of the New York and Bermudez Company before the federal court of Venezuela in the action instituted against it by Messieurs Charles M. Warner and Patrick R. Quinlan, that it should agree to the validity of the title to the so-called Felicidad asphalt mine," which pamphlet has been especially recognized in this suit by its author, who, on page 9, says, "10. To form a right opinion as to the rights and obligations derived from said convention, set up for a law of Venezuela (articles 1076 and 1077 of the civil code), we give here the integral part thereof," it being observed that he copies it thereinafter with the three additional articles.

Considering[d] that by the analysis and appreciation of the evidence of both litigants it is proved in the records that the company has confined itself to the exploitation of an asphalt lake discovered within the territory of the State of Bermudez.

Considering:

That the obligation of the canalizing of one or more of the rivers of the State of Bermudez, contained in the second additional article, is an unqualified obligation, independent from the text of the sole paragraph of the same additional article, for which reason it is not just to establish that said canalization or the construction of a railway determine an alternative obligation. In that class of obligations the contractor binds himself to one of two prestations, and in the present case the construction is left at the discretion of the contractor, since the paragraph reads: "He will have the same rights if he constructs a railway."

Considering:

That it appears from the survey contained in the records, authorized by the engineers, S. Ortega, E. Gomez Franco, and Rafael Diaz, that on the whole tract of the two portions of the river which they have surveyed, namely, that from Cano Colorado to the coast guard station of that name, and that from there to the city of Maturin, no work, sign, or indication has been found, during the careful inspection made, showing that it has ever been pretended to canalize said canyon and river, since they remain in their primitive state;

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[a] The fact, which was assumed by the lower court, that the contract in question was a lease, was the sole ground upon which the sequestration could have been made; hence, to this extent the name was vital.

[b] This is what the Government expressly denied to the company in public documents from the Government archives, and to which the attention of this court was particularly drawn, but which they entirely ignored. (See 7/58, 7/54, and 7/57.)

[c] See note, page 17.

[d] The record proves the direct contrary of this. (See 7/52-2 pp. 6 to 9, and note on page 9 of same as to omissions of years 1892-1902, 1904.)

Considering:

That while it is true that, as appearing from the certification issued by the ministry of fomento on the 26th of November, 1900, communications were respectively addressed to the civil and military chiefs of the States of Gumana and Maturin, transcribing to them the resolution of the executive power, declaring that said company could make use of all and every one of the rights granted it by the contract, and that it had, in every case, the same preference in any preemption of asphalt mines or public land; such a fact is justified by the circumstances that at the time of those communications the cancellation of the contract had not yet been petitioned for, or, in other words, that that contract was firm as long as its cancellation had not been declared by the judicial authority.

Considering:

That the certification issued by the ministry of fomento, on the 23d of July, 1900, is radically null, as deriving from an usurped authority, in accordance with the provisions of article 120 of the constitution of 1893, in force at the time the abovementioned certification was issued. By that article every magistrate or corporation is definitely prohibited from exercising functions that are not thereby or by the laws expressly attributed to them. The same constitution, by its article 118, declares the acts derived from any usurped authority to be void, and inasmuch as in the organic law of ministries of the 19th of March, 1898, there does not exist among the faculties of the ministers that of issuing certification such as that referred to, and inasmuch, furthermore, as article 95 of the same fundamental law provides that the acts of ministries must conform to the constitution and the laws, it follows, therefore, that the above-mentioned certification is deprived of any legal value,for which reason it can not either be considered as a confession, as the attorney for the defendant company pretends.

Considering:

That obligations are to be complied with exactly as they have been contracted. The debtor is responsible for damages in case of breach (article 1163 of the civil code of 1880; 1190 of the present code).

Considering:

That the recissory condition is always implied in synallagmatic contracts subject to the event that one of the contracting parties should not comply with its obligation. In this case the contract is not of right canceled. The party respecting which the obligation has not been complied with has the option either of compelling the other party to the execution of the contract, if it is possible, or of demanding the resolution thereof, besides the payment of damages in both cases (article 1110 of the civil code of 1880; 1137 of the present code).

Considering:

That article 9 of the contract under discussion provides, in its final part, that "the nonfulfillment of any part of the stipulations herein mentioned renders ipso facto the present contract null and void," which clause the federal court of Venezuela, in a sentence pronounced on the 23d of August, 1898, declaring the nullity of the executive resolution of the 4th of January of the same year, petitioned for by the New York and Bermudez Company termed, in number 10 of the preamble "in unqualified binding compact," which term this tribunal confirms; and inasmuch as said compact is quivalent in law to the implied recissory condition dealt with in article 1110 of the civil code of 1880, equal to article 1137 of the present code, it produces the same effects and does not imply the waiving of any right.

Considering:

That the nonexecution of the contract by the defendant company is fully proved in the records.

Considering: [a]

That the allegation of prescription is irrelevant, both because the cause of the obligation being in vigor, which in the present case is the contract of 1883, the obligations itself exists, and because from the month of April, 1886, when the last extension of time expired, up to the 20th of July, 1904, when the action was instituted, the twenty years required by the law for the prescription of personal obligations have not elapsed (article 1909 of the civil code of 1880; 1964 of the present code).

In virtue of these grounds, administering justice by authority of the law, the appealed judgment is confirmed in all its parts and appellant is condemned to pay the expenses.

Let it be published and registered.

Let the file be returned.

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[a] See note attached.

Given, signed, and sealed in the sitting hall of the Federal and cassation court, at the Federal palace of Caracas on the 7th day of the month of August, one thousand nine hundred and five, the ninety-fifth year of the Independence, and the forty-seventh of the federation.

The Vice-President,	EMILIO CONSTANTINO GUERRERO.
The Relator,	THOMAS MARMOL.
The Chancellor,	J. ABDON VIVAS.
Judge,	E. ENRIQUE TEJERA.
Deputy Judge,	FERNANDO CARDENAS DELGADO.
Deputy Judge,	EMULIO H. VELUTIM.
The Secretary,	R. MEDINA TORRES.

These five "Considerations" agree in principle with our contentions, and also with the opinion of Dr. P. Febres Cordero, who as attorney-general of the nation in 1898 rendered an opinion found on page 106 of the pamphlet referred to by title at foot of page 5, supra, and translated on page 125 and following of volume 1 printed book, Felicidad litigation. But in practice, the present court departs from the action its predecessor, in sending this case first to an inferior division of the court, thus requiring two hearings and an appeal, at least, where the former court settled the case definitely in one hearing.

Moreover, by dividing the case into two parts it required four hearings and two appeals, at least, to reach the same definite result that the court in the previous case reached in one hearing.

It is evident from the record of this case that this division of both the court and the case was deliberately done for the purposes of delay, that thereby the final result might be to put off as long as possible, in order that the Government of Venezuela, being in possession of the property, might the longer enjoy the possession and the fruits of the company's property, and instead of this action of the court of first instance being an advantage and protection to the company, as stated by the lower court, it has been a direct hardship, and has greatly prolonged the proceedings and added immensely to their cost.

Note referring to page 11 of decision: It appears by this record, page 1, that the original Hamilton contract made in September, 1883, had certain additions made, one in October 1883, and three others in May, 1884. That the contract was approved by Congress in June, 1884—that is, after these additions had all been made. Therefore it appears that the Congress of 1884 had before it the contract and all four additional articles, but it only approved the first additional article and therefore by all ordinary rules of construction, this was equivalent to an express declaration that Congress did not desire to approve the last three additional articles. When therefore this court declares, see page 11, that by the omnibus decree of the Congress of 1885 approving in gross all Executive acts of the President, it included these additional articles, it is plainly in error, as the additional articles had been passed upon by a previous Congress, and failed of approval, hence by the action of the previous Congress, they were removed from the domain of a simple Executive act, requiring confirmation. The rest of what the court says in that paragraph on page 11, about Señor Bance's quoting the contract with all the articles attached and thereby giving them judicial validity, is too absurd for serious consideration; except that it shows that this court was itself doubtful of their judicial validity, without Doctor Bance's approval.

Note to pages 14 and 15: By Article VIII of the Hamilton contract (which this court very carefully refrains from mentioning or quoting), the rights and obligations of Hamilton became fixed as of the date of September 15, 1883, and the period of the statute of limitations runs from the same date.

The time to begin the work has nothing to do with the term of the contract, or with the term of the running of the statute of limitations, and the date of the approval by the federal council refers only to said extension of time for beginning the work. (See Art. IX.) It is therefore evident that from and after the 16th day of September, 1903, all actions for breach of the terms of the above contract, were absolutely barred.

[Translation.]

OPINION OF PROCURATOR-GENERAL.

REPUBLIC OF VENEZUELA,
OFFICE OF THE PROCURATOR-GENERAL OF THE NATION.

Report of the procurator-general of the nation upon the Executive order declaring the escheat of the contract between the Government and the New York and Bermudez Company for the exportation and exploitation of the natural productions of the forests on the wild lands in the State of Bermudez of Venezuela.

MAY, 1898.

REPUBLIC OF VENEZUELA,
OFFICE OF THE PROCURATOR-GENERAL OF THE NATION.

Report of the procurator-general of the nation upon the declaration of escheat of the contract executed with Horatio W. Hamilton in 1884, which was assigned to the association known as the New York and Bermudez Company in 1885, for the exploitation and exportation of the natural products, including asphalt, of the forests standing on the wild lands of the State of Bermudez.

The former minister of fomento of the United States of Venezuela issued, on January 4 of the present year (1898), an order wherein, on various grounds, is declared escheated the contract to which the present report refers, except in regard to the exploitation of asphalt, on account of its not having been executed in the period granted therefor, nor before said period, and because "by the ninth article of said contract it is provided that failure to comply with any of its terms annuls it at once." And as Señor Dr. Carlos Leon, in his capacity as agent of the New York and Bermudez Company, presented a petition to the ministry of agriculture, industry, and commerce, under date of April 12 last, asking for the annulment of said order of January 4 of the present year and, as a consequence, the confirmation of the contract referred to, the undersigned, procurator-general of the Republic, in compliance with the dispositions made in cabinet by the citizen President of the Republic, hereby reports his opinion on the subject, having studied the papers which the Señor Minister of the Department was pleased to send to him with his official communication of the 23d of the present month.

* * * * * * *

The contract having been entered into and its fulfillment ordered, one of the parties says, some time after, that the other party has not carried out its obligations, when such other party, confiding in its rights, believes the contrary. Here, then, is a difference, a controversy, the decision of which, if it can not be amicably arranged by mutual consent of the parties, devolves only upon the judicial power, and in no manner upon one of the parties themselves. The law, always wise, always prudent, foresaw the dispute which might arise in contracts and provided that a condition of dissolution shall be always implied in bilateral contracts, in case one of the contracting parties should not meet his obligations. (Art. 1131, civil code.) And as it also provided in such case the contract should not terminate automatically (de pleno derecho), but that the party who had suffered from failure of fulfillment should have the option, either to force the other party to perform the contract, if performance be possible, or to demand its recision, with payment of his damages and losses in either case (ibid.), so also it directed that in such cases as the present, the high federal court is the tribunal which should take cognizance of and decide in first and only instance controversies arising from contracts or negotiations entered into by the National Executive. (No. 11, Art. 110, Constitution; No. 7, Art. 11, organic law of the high court.) And this method of procedure gains more force, when one observes that it is provided for in this contract in question, which directs at the close of its eleventh article that "doubts and controversies arising from this contract shall be decided by the tribunals of the Republic in conformity with its laws."

* * * * * * *

Such is the opinion of the procurator-general, which is respectfully submitted to the better criticism of the national cabinet.

CARACAS, May 28, 1898.

P. FEBRES CORDERO.

Republic of Venezuela, Office of the Procurator-General.

Managing Director New York and Bermudez Company to Mr. Hutchinson.

CARACAS, *August 8, 1905.*

SIR: I beg to inclose herewith a copy of the Official Gazette, No. 9532, published last night, with translation, marked with our document No. 7/59, which contains the decision of the court of last resort, the federal and cassation court of the United

States of Venezuela, on the appeal of this company from the decision of the hall of first instance, of said court. This decision confirms in all points the decision of the lower court and adjudges the costs of the litigation against the company.

In the name of the New York and Bermudez Company, as its legally-constituted attorney in fact, and as the managing director in Venezuela of said company, I appear before you and enter formal protest against the above-mentioned decision, and all officials and persons connected therewith, as being an absolute denial of justice and as being contrary to the evidence, the facts, and the law.

I also attach hereto the pamphlet numbered 7/58, which contains (separately bound) translations and copies of the following documents in the case:

ENGLISH TRANSLATIONS.

7/54. Argument of company's counsel, Doctor Bance, on appeal, for final decision in suit in Hamilton concession. Attorney-general of Venezuela made no answer to these arguments.

7/55. Organic law of courts of Venezuela, quoted by Doctor Bance, and also by the court in its decision.

7/57. Pinelli contracts for navigating the rivers canalized by the company, and comments on same.

SPANISH COPIES.

7/54, 7/57.

I also attach the following documents. These constitute the complete record on appeal.

ENGLISH.

7/52-2. Translation of second part of record, containing proofs submitted by the Government in this case. Referred to in decision.

7/52-3. Translation of third part of record, containing proofs submitted by the company in this case. Referred to in decision.

SPANISH COPIES.

7/52-1. This consists of the demand and answer, in lower court were translated some time ago, and copies are already before the Department of State, or can be furnished from Philadelphia office of company, namely, 7/1, 7/2, and 7/4.

7/52-4. This consists of the arguments of consul before lower court and the court's decision. The same remarks apply to these documents as to those next above—they are 7/48, 7/49, and 7/50.

I have no translations of 7/52-1 and 7/52-4 here, or would attach them hereto.

I also protest against the Government of Venezuela, the attorney-general of the same, and Dr. Manuel A. Ponce, his agent at Guanoco, for their illegal interference with and intimidation of our lawyers and agents, sent there to obtain testimony, and also our witnesses, as appears in the affidavits of Bartlett, Scott, Pinango, and others already before the Department. See documents 7/10, 7/11, 7/12, 7/19, 7/20, 7/29, 7/41, 7/42.

I also protest against the stoppage of my cables by this Government as constituting a denial of justice. See 7/37, 7/38, 7/39, and 7/40.

I also protest against the lower court for protecting A. H. Carner from testifying when he was subpœnaed by this company to certify to the authenticity of a certain pamphlet, marked 7/6, copy attached, entitled "The New York and Bermudez Company—Statement of its rights, against an illegal executive resolution of January 4, 1898. A revalidation of its titles and concessions by the executive power and the high federal court of the United States of Venezuela. Caracas. Editorial Printing Office of Soriano Sucessores. 1899"—the dedication of which to General Ignacio Andrade, constitutional president of the republic, is signed A. H. Carner, managing director; and the preface and acknowledgments of which are signed A. H. Carner, managing director, Guanoco (Venezuela), April, 1899. See 7/52-3, pages 22 and 23, also attached to Exhibit 1 herewith. An exception was taken by the company at the time, as important letters and documents in the company's files had been used by Mr. Carner in making the entitled defense, and it was desired to introduce them here and have them verified by Mr. Carner as the basis of his defense of the company. The action of the lower court frustrated this. There was still, as we supposed, a chance that on hearing this exception the higher court would give us the opportunity to examine Mr. Carner and get this evidence in. The higher court apparently has taken no notice whatever of this exception, at least the writer has not been advised of any, nor is the

incident in any way referred to in the decision of the court. I attach hereto the documents in question, marked as follows:

"Exhibits 1 to XVII," inclusive, noting the fact that there are two exhibits numbered 7, and no No. 14.

"Exhibit XVIII." See 7/52-3, page 51.

"Exhibit XIX." Two affidavits of Clyde Brown, secretary New York and Bermudez Company, sworn to before Edgar W. Lank August 26, 1904, and two affidavits of Peter B. Stoffen, dated August 26, 1904, and August 30, 1904, sworn to before Edgar W. Lank.

"Exhibit XX." The letters and copies referred to by Clyde Brown in Exhibit XIX, with his affidavit attached, dated August 26, 1904.

"Exhibit XXI." Consisting of extracts from Exhibits I to XVIII and an envelope containing various letters, statements of accounts, receipts, and other papers, from different agents of the company from 1886 to 1898.

I also protest against that part of the decision of the federal and cassation court on appeal (7/59) which gives weight to the testimony of Gen. Rafael Velasquez, whose evidence is all hearsay, and call the attention to the fact that it was on the strength of a telegram from this witness that the Government seized the property of the New York and Bermudez Company and placed it in the hands of our principal business competitors. I attach:

"Exhibit XXII." Documents 7/36, which contains this testimony in both English and Spanish and it also appears in 7/52—2, pages 102-108. The original of this testimony is attached also to the sequestration proceedings 7/51. And finally I solemnly and sincerely protest, in the name of the New York and Bermudez Company, against the said decision of the federal and cassation court of Venezuela and against any and all other acts of whatever nature or kind, whether embodied in this protest or not, which have been or which may be performed in the premises, and which are or may be prejudicial to the interests of the said New York and Bermudez Company, reserving to said company all its rights in order that it may use them at the proper time and opportunity.

ROBERT K. WRIGHT,
Managing Director New York and Bermudez Company.

Subscribed and sworn to before me this 8th day of August, A. D. 1905, in the American legation, Caracas, Venezuela.

Executed in quadruplicate.

NORMAN HUTCHINSON, *Chargé d'Affaires.*

CERTIFIED COPIES OF THE PETITION MADE BY DR. CARLOS LEON IN THE NAME OF THE "NEW YORK AND BERMUDEZ COMPANY," 1900.

[Seal of the ministry of fomento.]

Julio Perez Garcia, director of territorial riches in ministry of fomento, of the United States of Venezuela, certifies that in the mining archives of this ministry, among the papers relating to the New York and Bermudez Company, are the following:

Leon's petition protesting against the order of escheat.

To the Citizen Minister of Agriculture, Industry, and Commerce:

I, Dr. Carlos Leon, counselor, here domiciled and of legal age, as representative of the New York and Bermudez Company, as appears from the original power of attorney, which I inclose herewith in order that it may be returned certified, respectfully represent to you:

Under date of January 4, 1898, was issued by the ministry of fomento an order wherein the citizen President of the Republic, with the affirmative vote of the cabinet and after deliberation by the council of government, declared to have escheated the contract executed by said ministry with Horatio R. Hamilton, on October 19, 1883, to explore and exploit in the State of Bermudez the natural products of the forests standing on its wild lands, asphalt being included therein, of which contract the company represented by me is assignee. The causes set forth in said order for declaring the escheat of the contract are precisely those which should have influenced the mind of the citizen minister not to issue said order; in effect, it is acknowledged in said order that the New York and Bermudez Company has continually exploited in the State of Bermudez, and what is more, that said company owns, by concession obtained under the law of mines, a bed of this substance in land for which it filed

claim and which it bought from the National Government under the law of wild lands. The ninth article of the contract reads thus: "Horatio R. Hamilton binds himself to begin the execution of this contract within the term of six months, which may be prolonged for six months more at the option of the Government, to be computed from the date on which this contract is approved by the federal council under the law in the matter; and default in the fulfillment of any of the stipulations herein expressed annuls this contract immediately," and from the very order which we are analyzing it appears that the company has fulfilled such stipulations, since it has explored the forests of the State of Bermudez, has exploited its asphalt mines, and moreover has paid scrupulously the 2 bolivars which it bound itself to pay for every 999½ kilos of asphalt which it should exploit. Not only has the company explored the woods of the State of Bermudez, but it has built 6 miles of railroad from the banks of the river Guanoco to the mine which is now in exploitation.

It has paid to the custom-house at Caño Colorado 40,000 bolivars of taxes on exported asphalt, and has paid 175,000 bolivars to the same custom-house for goods imported for the use of the great number of laborers in its employ. In the ministry of finance are the reports on the progress which the company represented by me has made in the midst of the forests of the State of Bermudez. It is not long since Señor Perez Leon, the present inspector of customs for the east, made one of the most brilliant reports to said ministry. There also may be found a report by Gen. Diego Bautista Ferrer, and another by the present administrator of customs of Caño Colorado, all of which you may obtain from said office in order better to enlighten your judgment. The company has spent more than half a million dollars in exploring the forests and exploiting the asphalt mines of the State of Bermudez and I am unable to understand how it is said in said order that: "The expenses which the said company may have incurred in its works and constructions can not validly be alleged in proof of the validity of this contract, since they were incurred only for the exploitation of the aforesaid deposit of asphalt." This shows that when the order was issued the contract of which the company represented by me is assignee was not even read; indeed the contract in question says in its first article:

"The Government grants to Señor Horatio R. Hamilton the right to explore and exploit the natural productions of the forests standing on wild lands in the State of Bermudez, he being empowered to take from them wood for building," etc.

In its second article:

"The Government also grants to Señor Horatio R. Hamilton the right to exploit the asphalt in said State of Bermudez."

In its fifth article:

"Señor Horatio R. Hamilton binds himself to pay to the public treasury 2 bolivars for every 999½ kilograms of asphalt exported by him; and 5 bolivars centimes for each kilogram of any of the natural productions above named," etc. The ninth article has already been quoted above.

Has the company which I represent made default in the fulfilment of the above stipulations? The Government grants to Señor Horatio R. Hamilton the right to explore and export the natural productions of the forests standing on wild lands in the State of Bermudez, he being empowered to take therefrom timbers, etc., and also grants to him the right to exploit the asphalt mines, Hamilton binding himself, in compensation, to pay to the public treasury 2 bolivars for each 999½ kilograms of asphalt exported by him, and 5 bolivar centimes for each kilogram of any of the other productions. It appears from the order that the company was exploiting, at the date of the issue of the order, one of the asphalt mines lying in the forests of the State of Bermudez, and it should have been remembered that in order to discover that mine it was necessary to make explorations in said forest under authority; and, moreover, the company has planted in them more than 20,000 cacao trees and has built wharves upon the river Guanoco; the timbers taken from the forests have been employed by it in the construction of bridges, of buildings for the lodging of its great number of employees, and of the railroad line above mentioned.

Thus it is evident that the company has exploited and was exploiting, both by its mining and by its agricultural works, up to the issue of the sudden declaration of escheat, the concession assigned to it by Hamilton, unless the citizen minister who issued the order believed that the company ought to explore and exploit simultaneously all the land and all the resources contained in said concession; but this, besides being absurd, is an obligation which is not found and can not be found in any of the clauses of the contract, and hundreds of millions would not suffice for such colossal undertaking. Business enterprises begin, however flattering may be their distant future, with a capital proportioned to the means of those who initiate them, being given the circumstances of time and place under which they are to be developed, and in this enterprise there have already been invested more than 2,500,000 bolivars.

The farms and plantations known as "Guariquen," "Puerto Caripe," "Parare," "Buen Pastor," "Agua Clara," "Guacarapa," "Majagual," "Azagua," "Princeres," "Caripe," "Maturin," "Acagua," "Pilar," "Cariaco," and various others, extending for 80 miles from the mine, live by the company. It buys from them all their productions, and the great number of Americans who constantly come to visit the mine gives life and animation to a large part of the territory of the State of Bermudez; and to-day all this region is desolate at the cessation of the daily work given by the company.

A steamer owned by it plies between Trinidad and Caño Colorado, and the Government must have learned, from the reports of the custom-house of this port, the profit yielded by this steamer to the nation. I take the liberty of asserting that the order was not issued after sufficient deliberation, because such a measure, besides inflicting great losses upon the company represented by me, inflicts great losses also upon the National Government and upon a large part of the State of Bermudez. Moreover, what confidence can foreign corporations have when, after they have sunk great sums of capital in the country, they may be suddenly and without warning deprived of all their rights. This is equivalent to closing the doors to foreign investors, inspiring in them just distrust.

For these reasons I have recourse, through your honorable means, to the chief of the executive power, petitioning him that he be pleased to vacate the order issued on January 4 of the present year by the citizen minister of fomento, and thus to declare valid the contract of which the company represented by me is assignee.

CARLOS LEON.

CARACAS, *April 12, 1898.*

MINISTER OF AGRICULTURE, INDUSTRY, AND COMMERCE:

The foregoing document was received in this office to-day, April 13, 1898, at 11 a. m.
The Director.

FRANCESCO DE P. ALA, O.

Minister Russell to the Secretary of State.

[Telegram.]

CARACAS, *September 7, 1905.*
(Received 7.02 p. m.)

Special commissioner reports he has been approached several times by an official of high rank in this Government with the statement that Venezuela was willing to settle controversy with the Bermudez Company on reasonable terms, provided it was made a matter of private negotiations and not of diplomatic intervention. That the French Cable Company was sending representative to negotiate settlement and like opportunity would be given Bermudez Company if representative with authority to negotiate and to act would come here. Special commissioner replies that he could not speak for the Bermudez Company; that he did not represent it and would not do so. The suggestion was further made that as the present manager of the Bermudez Company did not have authority to negotiate or make settlement someone of higher rank and more authority was necessary. Commisssioner has reason to believe that official of Government referred to was directed to make above suggestions by the highest official authority, but he declared he spoke unofficially. In the last conversation official spoke very guarded, but said door for negotiations was open and that the Bermudez Company must make the offer, but would not promise what the result would be. Commissioner said he would cause the Bermudez Company to be notified; beyond that he had nothing to say.

It is very important that the contents of this message should be kept in strict confidence.

RUSSELL.

The Acting Secretary of State to the American Minister, Caracas.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 14, 1905.

The President desires the commissioner, if he is further approached by Venezuelan officials in respect to the Bermudez Company, to state that any communication made to him on the subject will be transmitted to the Department of State.

LOOMIS.

The Secretary of State to Minister Russell.

[Telegram—Cipher.]

DEPARTMENT OF STATE,
Washington, October 18, 1905.

After full conference with Calhoun, the Department entertains the hope that questions between the United States and Venezuela may be settled without recourse to either of the alternatives contemplated in the dispatch of March 10, 1905. Our desire for the friendship and kindly feeling of Venezuela is sincere and strong. We have taken so much trouble and devoted so much effort as a friend of Venezuela, especially under the administrations of President Cleveland and President Roosevelt, that we are very reluctant to yield to the idea that any conditions between us can not be settled through diplomatic channels. You will confer with the Government of Venezuela in this spirit and report whether you find it disposed to resume the consideration of the various matters which have been the subject of discussion in the same spirit, in the hope of reaching adjustment consonant with substantial justice and equity without in any way intimating that Venezuela has not been actuated by that spirit in the past. Ascertain if they will meet us halfway in a friendly and practical effort to reach substantial justice without too much regard to technical questions, and report generally your views upon the practicability of such a course. Our desire that there should not be a recurrence of the same difficulties from which we helped to extract Venezuela a short time ago leads us to entertain a strong hope that the difficulties between Venezuela and France may be amicably adjusted. The French ambassador here, conferring regarding Venezuelan matters, has expressed in behalf of his Government most considerate and kindly feelings toward Venezuela, and I am sure that if Venezuela will go halfway with them toward an amicable settlement it can be accomplished. Use your good offices to aid in bringing this about if possible. Communicate freely by wire your progress and results.

Minister Russell to the Secretary of State.

[Telegram.]

CARACAS, *October 20, 1905.*

Your cable of the 19th (18th) received. Had a conference with minister of foreign affairs this morning. Can you tell me, in detail, what the desire of our Government is in the matter of Bermudez

Company case? What would be half way for us, and what do you consider half way for Venezuela? Would we admit that the Bermudez Company concession has been forfeited, thereby accepting verdict of the Venezuelan courts, and if so, would the Bermudez Company in negotiating for a new concession be willing to discuss the question of damages for nonfulfillment (of) contract? I think, probably, something may be done along these lines. The President is out of town, but I expect to have a conference with him in the course of a few days.

RUSSELL.

Minister Russell to Mr. Root.

No. 24.]

AMERICAN LEGATION,
Caracas, Venezuela, October 29, 1905.

SIR: I have the honor to inform you that the Venezuelan courts have appointed the appraisers to assess the damages alleged to have been caused the Government by the nonfulfillment of the concession of the New York and Bermudez Asphalt Company. The appraisers appointed are: Jesús Muñoz Tebar, Manuel Clemante Urbaneja, Isaías Garbiras.

Jesús Muñoz Tebar is a civil engineer; Urbaneja is a lawyer, and has been at times connected with the asphalt suits in Venezuela; Garbiras is a civil engineer.

I am, etc., WILLIAM W. RUSSELL.

The Secretary of State to Minister Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, November 9, 1905.

Reply to your dispatch of October 20 has been withheld pending conferences with representatives of Bermudez Company. Clyde Brown, representing that company, is now going to Caracas for the purpose of settling differences with Venezuelan Government if practicable. Do what you can to promote fair and reasonable settlement.

ROOT.

The Secretary of State to Minister Russell.

No. 19.]

DEPARTMENT OF STATE,
Washington, November 10, 1905.

SIR: I have just telegraphed you as follows:

"Reply to your dispatch of October 20 has been withheld pending conferences with representatives of Bermudez Company. Clyde Brown, representing that company, is now going to Caracas for the purpose of settling differences with Venezuelan Government if practicable. Do what you can to promote fair and reasonable settlement."

I was not willing to undertake to answer the questions of your dispatch of the 20th directly, because by doing so I might seem to

be taking upon the shoulders of this Government the negotiation of a settlement which, in my view, ought to be undertaken by the Bermudez Company itself. It is, however, the wish of the State Department to render every proper assistance within our power toward bringing any negotiation between the company and the Government of Venezuela to a conclusion which will be in accordance with substantial justice.

Prior to Mr. Calhoun's visit to Caracas, the Department had necessarily to proceed upon statements by interested parties regarding a great mass of facts, and these statements, although made in entire good faith, were, of course, liable to be colored by the feelings and opinions arising from self-interest and from the long-continued and heated controversy. Mr. Calhoun's mission was, as you are aware, to secure an unbiased and dispassionate view of the entire field of the controversy and all the acts and proceedings affecting the interests of the New York and Bermudez Company. Mr. Calhoun has not yet made his report. He has brought with him upon his return a great mass of notes from which he is now engaged in the preparation of the report. An informal conversation with him, however, immediately following his return, has produced upon my mind an impression that when the report is submitted it will appear that there were questions between the company and the Government of Venezuela appropriate for judicial decision and upon the raising of which a situation was presented calling for an equitable adjustment of differences and which can not properly be disposed of by a simple demand based upon the idea that all the right is on one side and all the claims of the Bermudez Company unimpeachable.

I have also a strong impression, derived from the same conversation with Mr. Calhoun, that the litigation in which these matters of difference have been dealt with has been conducted in an exceedingly harsh manner, and that, without undertaking to consider any question of technical legal right which may have been the subject of decision, the result has been a degree of injustice toward the company, which I have great confidence the Government of Venezuela will recognize and remedy if the subject can be approached in a spirit devoid of that controversial and unfriendly quality which has hitherto characterized the treatment of it, owing, perhaps, to a considerable degree to the attitude taken by the company itself.

The proceedings by which the company has been deprived of the major part of its property have been, in their essence, proceedings for forfeiture. Passing by the question whether upon technical legal grounds there exists sufficient cause to sustain legitimate forfeiture, we may well urge upon the Government of Venezuela that it is hardly consistent with that sense of justice which should control nations in their treatment of all persons who subject their property and property rights to the control of national power to press causes of strict forfeiture beyond the actual injury done and to inflict losses wholly incommensurate with the occasion.

You are familiar with the growth of equity jurisdiction under our own system of jurisprudence, having its origin in a sense of the injustice frequently wrought by perfectly unimpeachable legal judgments and in the desire of the sovereign to relieve unfortunate suitors from undue forfeitures and penalties and other harsh results following from the strict letter of the law. It is perfectly competent for the Govern-

ment of Venezuela to deal with the affairs of the Bermudez Company in this spirit of equity without in any decree admitting an impeachment of the validity of the judgments of the courts of Venezuela. It is especially easy for that Government to deal thus with a case in which the Government itself is the complaining party, for the complainant who has recovered a judgment can always limit its operation and rest satisfied with such degree of enforcement of it as he deems to be just. I wish you to urge upon the Government of Venezuela such a treatment of the present situation, as being due to that sense of justice which should control the action of a great and powerful Government and to that reputation for justice which every civilized nation prizes so highly.

There has been much evidence produced to the Department upon which the New York and Bermudez Company makes claims relating to the proceedings against them which will not be taken up for consideration until the submission of Mr. Calhoun's report and which I hope, by reason of the settlement of the matters in controversy along the lines I have described, may never require further consideration.

I am, etc.

ELIHU ROOT.

Mr. Russell to Secretary of State.

[Telegram.]

CARACAS, *November 23, 1905.*

Representative Bermudez Company had a very satisfactory interview with the President yesterday. The President said that he was very anxious to get rid of the question once for all and that he was sure that something could be done if mutual concessions were made. He has fixed next Saturday for the representative of the company to meet him again, at which interview the President will outline what he proposes, and has requested me to be present at the interview. I will report to you more fully after I have seen the President.

RUSSELL.

Mr. Russell to Mr. Root.

No. 31.] AMERICAN LEGATION,
Caracas, Venezuela, November 26, 1905.

SIR: As I advised you by cable, confirmed in a separate dispatch, I have the honor to inform you that I went on Saturday last with the local manager of the New York and Bermudez Company to confer with the President in regard to a settlement of the pending difficulties between the Venezuelan Government and the above-mentioned company.

The President stated that he was extremely desirous of settling the question once and for all, and after a long talk about the French question settled himself to discuss the asphalt question. He stated that, as the mixed commissions had given awards against the Venezuelan Government for claims arising from the last revolution amounting to about 42,000,000 bolivars, the parties responsible for the revolution

should assist in paying for those claims. He fixed the responsibility for the revolution on four parties—the Venezuelan Government, the Venezuelan revolutionists, the New York and Bermudez Company, and the French Cable Company, making each party responsible for its fourth part of the claims awarded. He then said the question to be settled was how much the Bermudez Company could give toward assisting in paying its fourth part. The other question, according to the President, was the granting of a new concession to the Bermudez Company for exploiting asphalt, in which new concession everything was to be cleared up, and all questions regarding titles, etc., would be adjusted satisfactorily.

Mr. Clyde Brown, the representative of the Bermudez Company, is going with me next Tuesday to see the President and discuss with him the plan proposed.

The President stated to me that the proposition from him was not final, but only served as a basis for discussing a definite settlement, but I think his purpose was to try and ascertain how much he could expect to get from the Bermudez Company. In this proposed plan the Hamilton concession is to be considered as having been canceled.

I am, etc.,

WILLIAM W. RUSSELL.

Mr. Russell to Mr. Root.

No. 34.] AMERICAN LEGATION,
Caracas, Venezuela, December 10, 1905.

SIR: I have the honor to report that on Thursday last I had a second interview with General Castro in regard to a settlement of the asphalt question.

I was accompanied by Mr. Hutchinson, the secretary of this legation, and Captain Wright, the resident manager of the Bermudez Company.

Mr. Clyde Brown had written me a letter containing his proposition for settlement, which proposition was submitted to the president at this interview. I inclose you herewith a copy of this letter.

The president, after talking for an hour, said that he would prefer the Bermudez Company to put its proposition in a more definite shape, and state exactly what it could offer for a final settlement of the whole question. Mr. Clyde Brown is preparing this definite proposition, and it will be presented to the president next week. The proposition from the Bermudez Company is to pay to the Venezuelan Government $20,000 annually for the remainder of the time, eighty-one years, that its land and mining titles have to run. This of course presupposes a recognition by the Venezuelan Government of the above-mentioned titles. The company is to accept the decision of the court annulling the Hamilton concession, and a new and special contract is to be granted to the company by which it will be guaranteed in the quiet and peaceful possession of its property. This new contract is to be submitted to the next Congress for ratification.

I will inclose you by next mail a copy of the new proposition from the Bermudez Company, and advise you by cable of the result of my next interview with the president.

I am, etc., WILLIAM W. RUSSELL.

Mr. Brown to Minister Russell.

CARACAS, *December 4, 1905.*

SIR: I have carefully considered the basis of settlement of the controversy between the New York and Bermudez Company and the Venezuelan Government, presented by President Castro to you and Captain Wright, the company's resident agent, in the interview of November 25, and I am glad to avail myself of your suggestion that I put in writing the views of the company thereon. I shall first summarize the propositions of President Castro as I understand him to have expressed them to you.

First. President Castro wishes the company to acquiesce in the decision of the federal and cassation court annulling the Hamilton concession. He has not stated whether he expects the company to pay any damages for the alleged breach of contract in case the findings of the appraisers appointed to assess damages are confirmed by the court.

Second. President Castro wishes the validity of the company's land and mining titles to the Bermudez Lake to be investigated, and for this purpose he suggests a reference to lawyers selected by the Government and the company respectively, of the titles themselves, the decision of the high federal court in the Felicidad suit, and the decision of the federal and cassation court in the Hamilton concession suit. However, he does not consider the validity of the titles a vital question for the reason that he considers his powers under the act of Congress of August 3, 1905, to be ample to deal with all possible phases of the subject and he has withheld the promulgation of that act and the executive regulations necessary to render it effective, in order that those regulations may be made to conform to any new contract which may be made with the company. Therefore such a contract may be made to embody any rights or privileges which the company may desire.

Third. The third and last proposition of President Castro concerns the damages claimed by the Venezuelan Government in the civil suit against the New York and Bermudez Company for aid alleged to have been given by it to the Matos revolution. President Castro classifies the total loss inflicted on the country by the Matos revolution in the following manner: First, the loss of life, which is incapable of estimation; second, the loss arising from the paralysis of industry and trade, which, being borne by individuals, can not be ascertained, there being no basis on which it can be calculated; third, the expense of maintaining the army, which, being a necessity of government in any event, can not be considered in this connection; fourth, the injury to and destruction of private property during the revolution, for which claims to the amount of about 40,000,000 bolivars were allowed against the Venezuelan Government by the mixed commissions which sat in Caracas in 1903. These claims President Castro proposes to divide equally among the "four parties," as he classifies them, to the revolution—namely, the Venezuelan Government, the Venezuelan revolutionists, the French Cable Company, and the New York and Bermudez Company—thus allotting to the New York and Bermudez Company as its share of those claims about 10,000,000 bolivars, or approximately $2,000,000. President Castro then asks what portion of this sum the company can afford to pay.

In answering this question it is necessary to consider whether the company should pay any sum because of alleged aid to the Matos revolution. The company's connection with the Matos revolution or, more accurately, with General Matos is fully stated in the testimony taken in the pending suit. It is there shown that the company had been given reason to believe, from reports of Mr. Carner, then its managing director in Venezuela, now the custodian of the company's property, and others, that under no circumstances could it expect the existing Government of Venezuela to protect its property from violence. Mr. Carner had gone so far as to give orders to the company's employees at Guanoco to shoot, if necessary, to protect the company's property and had complained of conflicting order sent from New York. The region in which the company's asphalt lake is situated was constantly swept by revolutionary bands, and the company was often forced, in self-defense, to supply food to them in small quantities and sometimes to do other small services. When General Matos asked the company for money he had united all the parties and forces opposed to General Castro in a formidable revolutionary movement which was certain for a time at least to control the company's property and would be friendly or hostile according to the company's action on General Matos's request. The company paid General Matos $130,000 for the protection of its property during the continuance of the revolution and for the protection of its just rights thereafter in case the revolution succeeded, and without any understanding or obligation with respect to its use.

At the time the payments were made and for more than a year thereafter the territory in which the company's property is situated, was wholly in the control of the revolutionary forces. The government custom-houses were in their hands and the company was compelled to pay customs duties to them. At the same time the company paid the same duties to the Venezuelan consul representing the Government of Venezuela at Port of Spain, Trinidad, where the company's vessels were cleared.

It is alleged, as a principal charge, in the complaint of the Venezuelan Government, that the company aided the Matos revolution after the decisive battle of La Victoria in October, 1902, thereby prolonging a hopeless conflict to the great injury of Venezuela. Even if the compulsory payments to General Matos could be considered as aid to the revolution in any sense as involving liability, this allegation is so far from being true that the company had, long prior to the battle of La Victoria, refused further requests of General Matos for money. All payments to him were made in the winter of 1901-2, and his subsequent requests, which were refused, were made at a time when the revolutionary movement was gaining strength.

During the entire continuance of the revolution the company, and as far as it is advised, all its agents in Venezuela, as they were instructed to do maintained absolute neutrality.

As the payments of money to General Matos were made in circumstances of coercion the company can not be justly charged with liability for such consequences as may have arisen from such payments even if such consequences are ascertainable. But it may be pointed out that the considerations suggested by President Castro for eliminating the expense of the army and the disturbance of business during the revolution, equally suggest the impossibility of bring-

ing into a relation of cause and effect the use of a sum of money by a revolutionary leader and the destruction or injury to private property to any specific amount. It is difficult to see how such payments can bear an ascertainable relation to the injury to private property when they are conceded to bear no ascertainable relation to the cost of maintaining the army or losses arising in trade and industry.

The Caracas mixed commissions sat under protocols concluded between Venezuela and various foreign powers as a result of the blockade of the Venezuelan coasts maintained in 1902 by England, Germany, and Italy. The commissions were authorized to consider all claims of citizens of the respective countries which had not been settled by diplomatic agreement or arbitration. It follows that the claims actually allowed were of a most miscellaneous character. Thus the largest single allowance made by any commission was 10,565,199 bolivars in favor of a Belgian company which had sold the Caracas waterworks to the National Government and had not been paid. Another large claim of about 2,500,000 bolivars, allowed to Mexican citizens, grew out of an indebtedness of the old Republic of Colombia, and, on its division, assumed by Venezuela in 1834.

Of the claims allowed to American citizens more than 50 per cent arose from breaches of contract and similar causes unconnected with revolutionary disturbances. Of those arising from injury to property during revolutions a large part grew out of disturbances prior to the Matos revolution, in one case, going back as far as 1871. About 10 per cent were attributable to the Matos revolution. In all cases the wrong was done by the existing government, its agents or forces, or by revolution which, having succeeded was treated as a de facto government from the beginning. The American commission applied the principle that the existing government was to be presumed to have done all in its power to suppress revolutionary violence and therefore could not be held responsible for injuries caused by such violence. The same principle was applied by the English, Dutch and Italian commissions. The German commission, while recognizing the principle, held that under the terms of the German-Venezuelan protocol, the principle had been waived by Venezuela as to injuries arising in the Matos revolution. The Spanish commission for a similar reason, refused to apply the principle.

Thus it appears from an analysis of the claims allowed by the commissions and the strange division of the "parties" to the revolution into four that the proposition of President Castro is simply an assessment upon the New York and Bermudez Company of one-fourth of the amount of the obligations of the Venezuelan Government to citizens of foreign States, accruing from a great variety of wrongs done by the Venezuelan authorities at different times during the past seventy years. The company must decline to be penalized in this manner.

In President Castro's interview with Captain Wright, on November 22, he stated that the courts in arriving at the decision of which the company complains were bound by strict technical rules; that it is the province of the Executive under the laws of the country to administer the equities of the case, and that it is his purpose to do so in making a settlement with the company. Since those things to which President Castro refers as the company's equities arise in the course of the legal proceedings, and since, further, President Castro has referred to the company's titles and the court deci-

sions as important to be considered in the present negotiations, it becomes necessary to summarize the legal propositions involved and the contentions of the parties in order to determine what the Government and the company, respectively, may fairly and equitably be expected to concede.

The contracts, titles, and decisions important in this connection are as follows:

The concession for the exploitation of asphalt and other natural products of the State of Bermudez granted to Horatio R. Hamilton, executed September 15, 1883, with an additional article executed October 19, 1883, all ratified by the Venezuelan Congress June 6, 1884, and subsequently assigned to the New York and Bermudez Company with the consent of the Venezuelan Government.

2. The so-called "additional articles" of the Hamilton concession, executed May 30, 1884, submitted to the Venezuelan Congress at the same time with the concession, but never, as the company contends, ratified by Congress.

3. The company's mining and land titles to the Bermudez Lake, granted December 7, 1888, and December 14, 1888, respectively, by which the ownership of the mine for a period of ninety-nine years and the ownership of one and fifty-four-hundredths square leagues of wild lands forming the surface of the mine were duly conveyed to the company.

4. The decision of the high federal court January 28, 1904, annulling the adverse title "La Felicidad."

5. The various proceedings and findings of the federal and cassation court in the pending suit for the annulment of the Hamilton concession.

As the whole subject is more or less involved in the proceedings in the suit last above mentioned, the controversy may be most concisely stated by summarizing the findings of the court in this case. It is in this case that the seizure of the company's asphalt lake and its exploitation in competition with the company during the pendency of the litigation has been made. This is the injury which, up to this point, has most substantially damaged the company's property and business. This seizure was made upon the theory that the Hamilton concession is a lease and the company a defaulting lessee. But in order to arrive at this result it became necessary to assume certain conclusions of law and findings of fact which should be first stated. Many of these conclusions and findings were assumed at the outset in order to justify the sequestration proceeding, but as they have since been expressed in final decisions they may be stated as such. First, the federal and cassation court has decided that the so-called "additional articles" of May 30, 1884, obligating Hamilton to "canalize" for exportation or importation one or more of the rivers of the State of Bermudez, beginning with Caño Colorado and Guarapiche, as far as Maturin, "and granting to Hamilton" the exclusive right to navigate the rivers that he may "canalize" are a part of the concession of September 15, 1883, for the exploitation of asphalt and other natural products of the State of Bermudez. The company contends that the so-called "additional articles" of May 30, 1884, in reality constitute an independent agreement, for the reasons that they deal with a subject-matter different from that dealt with by the concession and that the agreement is wholly supported by the independent and reciprocal considerations of the duty to canalize and the exclusive right to navigate.

It is further distinguished from the concession by the fact that it was never ratified by the Venezuelan Congress as was the concession.

The seventeenth section of article 43 of the constitution of 1881, vests in Congress the power "to approve or disapprove of contracts which the President shall make, with the consent of the federal council, concerning national public works; without which prerequisite they shall not go into effect." Pursuant to this provision, Congress acted on the subject on June 6, 1884, approving the agreement of September 15, 1883, and the additional article of October 19, 1883, fixing duties on the exploitation and exportation of wood. Congress failed to approve the so-called "additional articles" of May 30, 1884, and accordingly they were omitted from the contract as published in the Official Gazette of July 21, 1884. It is important to note that this act of publication gave for the first time legal validity to the agreement, by virtue of the law of October 11, 1872, which is published at the head of each issue of the Official Gazette. It is thus evident that Congress did not desire to approve the agreement of May 30, 1884.

In order to uphold the validity of these "additional articles" the federal and cassation court is obliged to resort to a general resolution passed April 17, 1886, confirming the executive acts and decrees of President Crespo's administration. Passing the question whether this general resolution had any validity under the constitution, it could not have any effect upon the so-called "additional articles;" first, because Congress can not be presumed to have included in a general description acts which it specifically declined to approve. Second, because this agreement of May 30, 1884, was an act of legislation requiring, according to article 46 of the constitution of 1881, to be read and considered before being admitted, and after admission discussed three separate times on different days before becoming a law. That the execution of the agreement of May 30, 1884, was not made by virtue of executive power, but was the initiation by the Executive of an act of legislation to which Congress was a necessary party is clear from section 17 of article 43 of the constitution, above quoted, enumerating, among the legislative powers of Congress, the right to approve or disapprove contracts concerning "national public works" within which description the canalizing of streams and harbors clearly falls.

Second. The federal and cassation court finds as a fact that the company failed to canalize the streams and harbors mentioned in the so-called "additional articles" of May 30, 1884. Omitting comment in detail on the evidence produced on this point it may be pointed out that the court ignored the fact, proved, strangely enough, by documents presented by the attorney-general on behalf of the Government that in 1887 the Government granted to one Pinelli the right to navigate in and out of the port of Maturin and to load cattle at Cano Colorado or any point on the Guaripiche, all the places named being included in the exclusive right of navigation granted to Hamilton in the agreement of May 30, 1884. When the New York and Bermudez Company protested against these grants to Pinelli, the then President of Venezuela, the same President who granted the Hamilton concession, in reply said that there was no interference with the rights of the New York and Bermudez Company and "that no exclusive right of navigation to Maturin could have been granted to any person or

company and that the rights of the New York and Bermudez Company could only extend to the navigation of the interior rivers that it may canalize in a formal manner and to the satisfaction of the Government." Thus the "additional articles" not only failed of the legal sanction of Congress but were repudiated by the Executive power.

Third. The court found the failure to canalize "Cano Colorado and Guarapiche as far as Maturin" to be a "failure to make improvements" within the meaning of the seventh section of article 373 of the code of civil procedure, which provides that "sequestration shall be decreed of the property leased if the defendant is sued for default in payment of the rental, on account of the property becoming deteriorated, or on account of having failed to make improvements to which he is bound by the contract." This finding involved the assumption that the concession of September 15, 1883, and the "additional articles" of May 30, 1884, were to be taken together as a single indivisible contract and that as such they constituted a lease, a suggestion never before made, though the contract had repeatedly been the subject of executive and judicial action. Although the assumption of lease was absolutely necessary to sustain the order of sequestration of the company's asphalt deposit, the court gave no reason at the time the order was made for so constructing the contract. No adequate reason has at any time been given. The presiding judge of the federal and cassation court acting as a court of original jurisdiction, in an opinion given October 4, 1904, expressed himself as follows on the point:

"Considering the nature of the contract in question and the Government's purely administrative character in concluding the same, it follows that the law itself classifies the contract as one of limited duration, imposing active obligations and containing stipulations for a fixed price." These assertions, which might obviously be made of many forms of contract other than lease, were apparently not wholly satisfactory to the federal and cassation court, whose final decision, August 7, 1905, commented on the subject as follows: "The name which the contract merits is foreign to the nature and intent of the action brought; all that is necessary to say on this point is that said contract is bilateral and that it is alleged that one of the contracting parties has not complied with its obligations."

Fourth. In the very inception of the suit to annul the concession, and necessarily assuming the foregoing findings of law and fact to be indisputable, the court ordered the sequestration of the company's asphalt deposit and appointed as custodian Ambrose H. Carner, a former employee of the New York and Bermudez Company a business rival. This was done without the notice to the company of the pendency of any proceeding and, of course, without any opportunity to be heard, although the seventh section of article 373 of the code of civil procedure under which the sequestration was ordered expressly provides that the owner may demand an order that he himself be named custodian, and article 369 treating of the same subject provides that the sequestration shall not be decreed if the defendant give sufficient security or guaranty. As, before the complaint of the Government was served upon the company, Mr. Carner had been appointed custodian and had left Caracas to take possession of the company's asphalt lake, to which he was carried by a Venezuelan

gunboat, it is obvious that no attempt was made to comply with the provisions of the law.

Fifth. In ordering the sequestration the court ignored the company's independent land and mining titles to the asphalt lake, of which it was bound to take judicial notice, since they were granted by the National Executive with the approval of the Federal Council and published in the Official Gazette. As soon as the company had notice of the proceeding it called attention to these titles but the court again ignored them and has continued to do so throughout the whole proceeding, including the final decision.

Sixth. On July 28, 1904, by order of the court, Mr. Carner seized the company's asphalt lake at Guanoco by military force, appropriated money, records, and other articles belonging to the company, arrested employees of the company, and caused or permitted them to be maltreated by soldiers under his command. Mr. Carner has continued in possession of the asphalt deposit and has shipped about 23,000 tons of asphalt to the Pan-American Asphalt Company and the A. L. Barber Asphalt Company of New York, in which companies Mr. Carner is financially interested. To these companies, which are competitors of the New York and Bermudez Company, Mr. Carner has, as shown by his reports, sold asphalt at prices so low as to give all the margin of profit in the business to the purchasers, thus in fact turning over to competitors of the New York and Bermudez Company its capital that its business might be destroyed by the competition of its own product.

The company is advised that apart from any question of good faith the custodian of a mine under Venezuelan law has no right to extract the product, as he thereby tends to exhaust the thing he is appointed to conserve. When Mr. Carner asked the court to approve his conduct in this regard, the court evaded the question by saying that his duties were prescribed by the code and that he must follow its provisions. As, however, the court did not require Mr. Carner to give any bond for the performance of his duties, he has pursued his illegal and fraudulent course of conduct with impunity. Though not approved by the court, Mr. Carner's conduct was a natural consequence of its proceedings. Further, as Mr. Carner was an agent of the Government, it was at all times within the power of the Government to control his conduct. The Government is therefore responsible for the illegal sale of about 23,000 tons of asphalt, with the loss of profit thereon and the great damage done to the company's business by the competition of the product illegally sold.

Seventh. The final decision of the federal and cassation court annulling the Hamilton concession order the appointment of appraisers to assess damages on the basis fixed by the first additional article of the concession. This article deals only with duties on the exploitation or exportation of wood. Thus no attempt is made to assess damages for the alleged "failure to make improvements to which the lessee is bound by the contract" on which the company's asphalt deposit was seized and turned over to rivals in business. Furthermore no instructions as to the methods to be employed and facts to be considered in assessing damages are given by the court despite the fact that article 185 of the code of civil procedure expressly declares that every condemnatory judgment shall state in what the injuries that have been proved and are to be estimated

consist and shall determine the various points that are to serve the appraisers as a basis. The failure to give the instructions required by the code left the appraisers to exercise an arbitrary discretion. The following are some illustrations of the manner in which they have exercised that discretion in arriving at an award of 1,065,000 bolivars.

1. The appraisers state that the injuries ordered to be appraised should be estimated in accordance with the basis fixed by the first additional article of the concession. This article speaks only of the tax to be paid on wood. Yet the appraisers award 806,250 bolivars, four-fifths of the entire award, using as bases substances other than wood.

2. The appraisers enumerate a classification of woods whose quantity, location, or even existence in the State of Bermudez is not shown in the record of the proceedings in the suit.

3. The appraisers estimate the probable exportation of divi-divi from the State of Bermudez averaged for a period of fifteen years on the statistics of the years 1874 to 1882 of the exportations of the State of Zulia, 600 miles to the westward.

4. The appraisers estimate the probable exportation of rubber from the State of Bermudez averaged for a period of fifteen years on the statistics of the years 1881, 1882, and 1883 of the exportations of the State of Bolivar, which is the only State in Venezuela which produces rubber in large quantities.

5. The appraisers omit to consider that the first article of the concession excludes, in all that concerns the exploitation of its woods, the section of Barcelona, comprising one-third of the territory of the State of Bermudez.

6. The appraisers omit to consider the concessions and contracts executed by the Government in favor of various persons in contravention of the Hamilton concession.

7. The appraisers omit to consider the multitude of conveyances of wild lands in the State of Bermudez made during the term of the concession and their consequent diminution of probable exportation by the company.

It follows from these and other defects which might be pointed out that the errors of the appraisers invalidate their proceedings and that no just award of damages can be made against the company even if the finality of the decision annulling the concession be admitted.

The foregoing summary of the principal points in controversy between the Government and the company in the revolutionary and concession suits opens the way for a consideration of the company's land and mining titles to the Bermudez Lake. These titles were granted in 1888 by the President of Venezuela, with the affirmative vote of the federal council, and were published in the Official Gazette of that time, as is necessary in all decrees to which the force of public law attaches.

The deed of December 14, 1888, to quote its language, declared the adjudication on this date in favor of the New York and Bermudez Company, represented by their secretary, Mr. A. H. Carner, of 1 square league and 54 centesimals of another, of wild lands which form the surface of an asphalt mine which the said company owns, the which lands are acquired for the uses of the exploitation of the

said mine, situate in the parish of Union, district of Benitez, section of Cumana, of the State of Bermudez, and whose boundaries are, by the north, south, east, and west, lands covered by thick groves of mangrove trees and swampy lands. By this adjudication, as the deed declares, "the dominion and property of the said lands" was transferred to the New York and Bermudez Company.

This deed stated that the asphalt deposit was owned by the New York and Bermudez Company. The Government had, on December 7, 1888, granted to Mr. Carner, as secretary of the New York and Bermudez Company, a definitive title to the asphalt mine, by which was duly conveyed "the property of said mine in all the extension that corresponds to it and with respect to all the asphalt deposits comprised in the same." It gives "the right to the holder of this concession and his successors for the term of ninety-nine years to the exploitation and enjoyment of the said mine, with the legal restrictions and without any mining tax on its produce, since it comes within the provisions of article 40 of the decree already cited that regulates the mining law."

These titles have never been questioned by the Venezuelan Government. Even President Crespo, in his illegal attempt in 1898 to nullify the Hamilton concession by executive decree, stated that it was annulled "without infringing the rights which, according to law, the New York and Bermudez Company may have by virtue of mining concessions." The ground of annullment expressed in the decree was that the exports of "natural productions" were limited exclusively to a certain quantity of asphalt "that they own as per concession obtained in conformity with the mining law." The titles were presented by the company in the Felicidad suit, but the high federal court in rendering its decision of January 28, 1904, found it unneccessary to consider them, holding that "the titles of the Felicidad suffers from defects that vitiate it, and which are recorded in the proceedings, owing to the requisite prescriptions and solemnities not having been complied with, under pain of nullity, provided by the Code of Mines."

The defects thus referred to were: 1. That the Felicidad claimants, permission to explore was granted by the civil chief of Guariqen instead of by the governor of the State of Sucre as required by the mining code. 2. That the original acquisition of the mine, entered in the book of registry of mines of the municipality of Union, district of Benitez, State of Sucre, was not signed as required by the mining code and contained erasures, interlineations, additions, and blank spaces. 3. That the plan of the Felicidad mine submitted with the provisional title, on which the definitive title was based, did not comply with the mining code in two principal points in that it was not signed by the mine guard of the circumscription and was not rectangular in form.

The court remarked incidentally that under the Hamilton concession the National Government "could not give the title of the mine Felicidad nor grant, in the old State of Bermudez, mining concessions of asphalt to any other person or corporation" than the New York and Bermudez Company.

As has been pointed out, the company's land and mining titles were wholly ignored by the court in the sequestration proceeding,

and they were not questioned in the final decision annulling the concession. The titles therefore stand legally unimpeached.

For this reason and for the further reason that for sixteen years the Venezuelan Government stood by and saw the company expend more than half a million dollars in the development of the property covered by these titles, the company can not entertain President Castro's suggestion that these titles in these negotiations be made the subject of an informal reference to lawyers selected by the Government and the company, respectively. Aside from the fact that their agreement, assuming agreement to be possible, would have no binding effect, it would not be possible to name lawyers of prominence in Venezuela who have not at some time during the last eight years been of counsel either for the company or its adversaries. While declining such a reference the company is ready, as it has always been, to agree to an international arbitration to which all points of controversy between the Government and the company shall be referred for final decision.

In one respect only are the company's rights imperfect. It has no concession independent of the Hamilton concession to the line of railway, about 5 miles in length, extending from Guanoco to the asphalt lake. It has been the intention of the company prior to the expiration of the twenty-five years fixed as the duration of the Hamilton concession to take the steps contemplated by the law to acquire this railway concession. The company would, therefore, need to acquire this right in any settlement which might be made.

In ascertaining an equitable basis of settlement certain practical considerations relating to the physical condition of the asphalt deposit, the industrial conditions affecting the asphalt business in the United States, and the financial condition of the company must be taken into account.

The company's agents have not been permitted to inspect the asphalt deposit since its seizure. When they have attempted to do so, they have been forcibly prevented. Therefore the company has no accurate information as to the condition of the property, but from such information as it has been able to secure, indicating negligence in management and wasteful methods of mining employed by Mr. Carner, the company believes it probable that great deterioration in the condition of the property has taken place and that a large sum of money will have to be expended to restore it to a condition of economical operation. The company does not accept as true Mr. Carner's reports as custodian. Knowing his report of the condition of the property at the time he seized it to be false, the company has no reason to think his subsequent reports more trustworthy.

A second consideration concerns the earning power of the asphalt lake. The asphalt business is now and has been for several years keenly competitive. This condition will permanently continue, for the reason that the available sources of supply enormously exceed the demand. The supply in the United States has in the past few years been greatly increased by the development of new deposits of natural asphalt, similar to that of Trinidad and Venezuela, and by the production of asphalt artificially from the distillation of the petroleum oils of California and Texas. This process of distillation consists in drawing off the lighter and volatile oils for various industrial purposes and leaving an asphaltic substance as a residuum.

As this substance is a by-product it is offered at extremely low prices. It is produced in large quantities. It is inferior in quality to the best natural asphalts, but it is extensively used by competitors of the New York and Bermudez Company and therefore must be considered an important factor in the business. But apart from the production of oil asphalt, there is a very large and increasing production in the United States of natural asphalt fully the equal of Trinidad and Bermudez asphalt in quality and produced as cheaply. This production has destroyed forever the former monopolistic value of the Trinidad and Bermudez products, and has brought about conditions in which a large volume of business on a small margin of profit must be done in order to produce a substantial return. This condition is reflected in the business of the General Asphalt Company for 1903 and 1904. The company's earnings, not considering certain deductions which the company made, were in 1903 slightly over 6 per cent of its total income and in 1904 less than 8½ per cent, a very moderate margin of profit as compared with earnings in other kinds of business.

The company has expended more than $500,000 in the development of the asphalt deposit and many hundred thousand more in defending its property from attacks on it made in executive decrees and judicial proceedings. As these attacks began in 1897 when the company's production of asphalt first began to promise a remunerative return and have continued practically without interruption ever since, the company has never had the quiet enjoyment of its investment and has never paid a dividend. As has been pointed out, its capital has, for the past sixteen months, been actively employed to destroy its business.

It follows from these considerations that the company can not entertain a proposition to settle its controversies with the Venezuelan Government by the payment of $2,000,000 or any other sum of money. It will require all the capital it can command to restore the asphalt deposit itself, repair the damage done to its business, and transact that large volume of business by which alone under present conditions a substantial earning, can be made. The company is willing to make such terms as will enable the Venezuelan Government to participate reasonably in that earning, and for that purpose is prepared to suggest a royalty upon the product mined, thus giving the Government a revenue increasing with the development of the business. To this end the company offers the following terms, all to be tendered without prejudice to its right to assert a denial of justice or any other right in case the negotiations for settlement fail:

1. The company to acquiesce in the annulment of the Hamilton concession.

2. The company to waive all claims against the Venezuelan Government for damages arising from the seizure of the asphalt lake, the sales of asphalt to competitors, the damage to its business, the deterioration of the mine, the extraordinary expense of litigation and management incurred in protecting the property during the past eight years, and all other claims against the Government for damages, however arising.

3. The Government to waive all claims for damages in the concession and revolutionary suits and all other claims against the company for damages, however arising.

4. The Government to restore the company to the possession of the asphalt property at Guanoco immediately upon the conclusion of an agreement of settlement and to guarantee the company in the future quiet enjoyment thereof. Meanwhile to prevent shipments of asphalt therefrom or the exercise by Mr. Carner or any one representing him of any authority over the property in order that no further opportunity be given for its injury.

5. The company to pay a royalty of $1 per ton on all asphalt exported or consumed in Venezuela. In this connection it is to be noted that its mining title wholly exempts it from taxation. The probable income which this royalty would produce may be shown by the following figures: In 1899 the company exported 11,825 tons; in 1900, 17,981 tons; 1901, 21,418 tons. In 1902, owing to the blockade maintained by the Venezuelan Government of the eastern coasts, the shipments fell to 7,648 tons; but from January 1, 1903, to February 1, 1904 (the company's fiscal year having been changed to the 1st of February), they arose to 22,439 tons; and during the following five months prior to the company's dispossession they amounted to 15,062 tons, so that the shipments for the fiscal year 1904–5, if they had not been stopped by the Venezuelan Government, would at the same rate have amounted to about 36,000 tons.

6. The company to be granted a railroad concession for its 5 miles of railway, together with such land as may be necessary for the convenient operation of the railroad and the privilege of cutting timber necessary for ties and wharves and other purposes from the unappropriated forest lands on the Guanoco and San Juan rivers. The company also to be granted the free right of navigation between the company's property and the high seas in both directions by the most convenient route.

7. In 1900 the company erected a refinery at Guanoco at a cost of about $100,000. Subsequently the Venezuelan Government levied a prohibitive duty on barrels and barrel stock. As no native woods could be found from which barrels could be economically manufactured the refinery has remained idle. As it is to the interest of the Government that the business be done in Venezuela so far as practicable, as thereby more labor is employed and more money disbursed in the country, it is to be assumed that in case a settlement is made, there will be no objection to granting the company the privilege of importing and exporting barrel stock or other packages and machinery, for use in the business, free of duty.

Yours, very respectfully,

CLYDE BROWN.

Mr. Russell to Mr. Root.

No. 39.] AMERICAN LEGATION,
Caracas, Venezuela, December 24, 1905.

SIR: I have the honor to inclose you herewith copies and translations of the correspondence in the negotiations for a settlement of the asphalt question. With these inclosures the record is complete up to date, a copy of Mr. Brown's letter to me of December 4 having been forwarded in a former dispatch. Translations of all of Mr.

Brown's letters to me have been presented to the President through the minister for foreign affairs.

Up to the 21st instant I was very hopeful of a settlement, as I thought that the verdict of the court on the report of the appraisers for damages arising from the nonfulfillment of the Hamilton concession would be made to conform to the terms proposed by the Bermudez Company. There has been no verdict rendered yet, and the last memorandum from the Venezuelan Government insists that the settlement must conform to the verdict. The federal and cassation court has adjourned until January 8, the regular adjournment for the Christmas holidays.

I think the Government is disposed to accept the annuity of 100,000 bolivars proposed by the company, although, as you will see from the correspondence, no definite acceptance of this amount has been given. The appraisers' estimate of damages was 1,065,000 bolivars, and the Bermudez Company filed a document setting forth the errors made by the appraisers and asking for a revision of the report. This document has been made a part of the court record, but up to date no revision has been made, and now Mr. Brown in his last letter to me withdraws his proposition to set aside as much of the proposed annuity as will satisfy a reasonable amount (200,000 bolivars) to be assessed for damages, and adheres to his original proposal of an annual royalty. The Government adheres to the terms contained in its original memorandum (inclosure C), and confirmed in a second memorandum (inclosure E).

There will probably not be much done next week in this matter, but I will keep you fully advised.

I am, etc., WILLIAM W. RUSSELL.

[Inclosure No. 1.]

Mr. Brown to Minister Russell.

CARACAS, VENEZUELA, *December 12, 1905.*

SIR: I beg leave to refer to the information you have given me of your interview with President Castro and Minister Ybarra, on the 7th instant, at which you read to them the concluding pages of my letter to you of the 4th instant.

I understand that among other things President Castro objected to the suggestion of 5 bolivars a ton for the reasons that it is an amount not mentioned in the mining code, and, further, does not definitely indicate the income which the Government may expect.

As to the first point, the company is advised that the provisions of the mining code are not adequate to deal with the present controversy. The company suggests a special contract dealing comprehensively with the whole subject executed by the President by virtue of his power to execute contracts of national interest, to be approved by Congress.

On the second point the company is willing to offer a fixed sum instead of a tonnage royalty.

I therefore request you to say to President Castro that the company will pay to the Venezuelan Government an annual royalty of 100,000 bolivars for a special contract as aforesaid, satisfactorily expressing the following terms:

1. Restoration to the company of Bermudez Lake, its works, and appurtenance, and a guaranty of the quiet enjoyment thereof for the unexpired term of the mining title granted in 1888, said period to constitute the term of the special contract now proposed.

2. Restoration, as far as possible, to the company, of all asphalt and other property taken from it at and since the order of sequestration and all aid from the Government to the company in tracing and recovering all such asphalt and other property as may have passed out of the Government's immediate control.

3. The ownership of a strip of land of convenient width covering the railway and adjacent buildings.

4. The privilege of importing and exporting, free of duty, machinery, tools, appliances, and other articles reasonably incidental to the operations of the business of mining, refining, and transporting asphalt.

5. The privilege of importing and exporting, free of duty, barrels, barrel stock, and barrel-making machinery and operating a barrel factory free of tax.

6. The privilege of cutting timber necessary for ties, wharves, buildings, barrels, and other purposes reasonably incidental to the business from the unappropriated forest lands on the Guanoco and San Juan rivers.

7. The free right of navigation between the company's property and the high seas by the most convenient route.

8. Exemption of all the company's property and business from all taxes of all description.

9. The Government to dismiss the revolutionary suit and enter satisfaction of any judgment rendered in the concession suit without the payment by the company of any sum of money. The Government and the company mutually to waive all claims for damages one against the other.

10. The contract to be submitted to the National Congress for approval.

Yours, very respectfully,

CLYDE BROWN.

[Inclosure No. 2—Translation.]

Minister for Foreign Affairs to Mr. Russell.

Referring to a letter to you from Mr. Clyde Brown of the 12th instant, a copy of a translation of which you gave me, and which copy I showed to General Castro, who requests me to say to you as follows:

1. The Government is willing to celebrate a contract for the working of the asphalt mine which has been a matter of controversy with the Bermudez Company, which contract will be duly approved by the National Congress.

2. The Government finds no inconvenience to accept an annual sum to be agreed upon, payable quarterly in advance; always provided that the company satisfy in addition payment of damages assessed by the court as agreed upon in our conference of the 9th.

3. The former points having been agreed upon and arranged, the Government will have no inconvenience in returning to the company its properties that have been embargoed.

4. The Government will give to the company the railway contract that it needs, clauses and conditions of which shall be treated of and decided on in the respective contracts to be celebrated.

5. The Government will also grant to the company the right of free navigation in the form which may be necessary for working the mine and the railway service, the company to fulfill in every case the provisions of the law on the subject.

6. The Government would exempt the company from the payment of all municipal taxes.

7. The suit at present pending in the court for damages arising from the action of the company in the revolution shall be arranged separately by mutual agreement of the parties, subject of course to the proceedings in the court.

ALEJANDRO YBARRA.

Received December 14, 1905.

W. W. RUSSELL.

[Inclosure No. 3.]

Mr. Brown to Mr. Russell.

CARACAS, *December 14, 1905.*

SIR: I beg leave to acknowledge receipt of a copy of Minister Ybarra's note to you of this date.

In order to facilitate a settlement the company is disposed to accept the proposition of President Castro that some amount of money be paid in satisfaction of such judgment as may be rendered by the federal and cassation court in the suit for the annulment of the Hamilton concession. At the same time I should be glad to have

you bring to the attention of President Castro the fact that the report of the appraisers on which the judgment must be based has not been approved by the court and that the company has filed objections to it, among which are that it departs from the instructions of the court in the following respects:

1. It awards 806,250 bolivars in respect of substances other than wood, though wood only is mentioned in the first additional article of the concession, on which the court order the appraisers to base their award.

2. It fails to consider that the section of Barcelona, comprising one-third the territory of the State of Bermudez, was excluded from the concession so far as the exploitation of wood is concerned.

Deducting from the total award of 1,065,000 bolivars 806,250 bolivars for substances other than wood leaves 258,750 bolivars. Deducting from this amount one-third thereof for the section of Barcelona leaves 172,500 bolivars, which the company is advised can not possibly be exceeded in any judgment, which the court may render except as such amount may be increased by costs taxed against the company.

In satisfaction of such judgment as may be rendered the company could pay a sum not exceeding 200,000 bolivars upon the execution of an agreement of settlement provided that no payment of the annual royalty of 100,000 bolivars were to be made for two years. The Government should be willing to make this arrangement in view of the impoverished condition of the company's business and the necessity for large expenditures in the restoration of the property.

Summarizing the company's offer, if the judgment and costs in the concession suit should not exceed 200,000 bolivars, the company would pay that sum immediately upon the execution of an agreement of settlement expressing, except as herein modified, the terms outlined in my note to you of the 12th instant, provided that the first payment of the annual royalty be agreed to be made on or before December 7, 1907, for the year ending December 7, 1908. The date December 7, is suggested as the anniversary of the grant of the mining title of December 7, 1888.

Yours, very respectfully,

CLYDE BROWN.

[Inclosure 4.—Translation.]

Minister of foreign affairs to Mr. Russell.

CARACAS, *December 21, 1905.*

Mr. WILLIAM W. RUSSELL:

Referring to a translation, that you sent to me on the 14th instant, of a letter to you from Mr. Clyde Brown, I have to say to you as follows: That the Government confirms absolutely its communication in regard to the seven principal points already submitted and will only treat of the substance of those points.

Therefore, in regard to the first point, it appears that there is nothing more to add, as it treats of what is necessary and convenient for the company.

The second point must conform itself to the verdict of the court.

The third point is also for the convenience of the company.

The fourth point also is a concession made to the company, as well as the fifth and sixth, the conditions as to the railroad and navigation rights having to be submitted to the respective ministers.

As to the seventh point, the Executive can not legally treat in regard to this judicial question under consideration except through an arrangement which will put an end to the affair in the competent court, said arrangement to be made by the parties concerned or their respective representatives.

I am, etc.,

ALEJANDRO YBARRA.

[Inclosure 5.]

Mr. Brown to Mr. Russell.

CARACAS, *December 22, 1905.*

Hon. WILLIAM W. RUSSELL,
American Minister, Caracas, Venezuela.

SIR: I beg leave to acknowledge receipt of a copy of Minister Ybarra's note to you of the 21st instant. I have noted his observations on the various points enumerated in his note of the 14th instant.

As to the second point, there is, as yet, as I understand the procedure, no judgment against the company for a sum of money, the report of the appraisers not having yet

been confirmed. The Government, as the plaintiff in the suit, might therefore move, by some appropriate procedure, to reduce the amount allowed by the appraisers, limiting them to an assessment of duties on the probable exploitation and exportation of wood. The Government should in fairness take this step, whether the present negotiations succeed or fail, as in its own complaint it asks for no damages except for the failure to exploit and export wood, and the court in its decision limits the appraisers to that substance.

It is true that the company, in offering to pay a judgment not exceeding the maximum amount which might thus be confirmed, insisted upon a corresponding postponement of royalty, thus changing the form but not the substance of its original proposal. The company finds ample justification for this position in the manner which the appraisers exercised the arbitrary discretion allowed them by the failure of the court to give the specific instructions required by article 185 of the code of civil procedure as to methods to be employed and facts to be considered in assessing damages. I note the following among other illustrations of methods employed in assessing damages for the alleged failure to exploit and export wood.

The appraisers estimate the probable exportation of divi-divi from the State of Bermudez, averaged for a period of fifteen years, on the statistics of the years 1874 to 1882 of the exportations of the State of Zulia, 600 miles to the westward.

The appraisers estimate the probable exportation of rubber from the State of Bermudez averaged for a period of fifteen years on the statistics of the years 1881, 1882, and 1883 of the exportations of the State of Bolivar, which is the only State in Venezuela which produces rubber in large quantities.

The appraisers omit to consider the concessions and contracts executed by the Government in favor of various persons in contravention of the Hamilton concession.

These facts, taken together with those stated in my note of the 14th instant, clearly show that no assessment of damages could legally be made even when the finality of the decision annulling the concession is admitted. It, therefore, follows that while the company might be willing to pay a sum of money to satisfy the record and thus comply with the general basis of negotiation proposed by President Castro, viz, that the proceedings of the court in all respects be sustained, it can make no pecuniary sacrifice in order to do so and can not go beyond the suggestion already made.

If Minister Ybarra's observation is to be understood to imply that the Government will not move for any reduction in the report of the appraisers and desires that further negotiations await the decision of the court thereon, I beg leave to say that the convenience of the company does not permit me to await for an indefinite period this decision, and I must in that event withdraw the suggestion contained in my note of the 14th instant and adhere to the terms of my note of the 12th instant.

In this connection, I wish to note that the company's objections to the report of the appraisers were filed in court on November 30, 1905, referred by the court to the attorney-general on December 4, 1905, and on December 7, 1905, formally admitted by the attorney-general as a part of the record in the case. In the interview with President Castro and Minister Ybarra on December 7, Captain Wright insisted upon the objections which the company had filed as above, President Castro thereupon stated that the company should send its counsel to the court to procure a speedy determination of the objections. In response to this, the company's counsel applied to the president of the court, who stated that he understood that the subject was in course of settlement between the Government and the company and that the court was awaiting the outcome of the negotiations. Thus we are told by Minister Ybarra that the settlement must conform to the decision of the court and by the president of the court that the decision will conform to the settlement.

If, finally, Minister Ybarra means to treat the appraisers' report as being already ipso facto the decision of the court and to propose that the company shall pay 1,065,000 bolivars to "conform to the verdict" the proposal is as stated at the outset of the negotiations wholly inadmissible and must be declined.

On the important point of the amount of annual royalty, I wish to note that while the company's proposal of 100,000 bolivars annually has been before the Government since December 12, the Government has not gone further than to say that it will accept a sum to be agreed upon. This indefinite statement is wholly unresponsive to the company's proposal. Further the company's corresponding stipulation for complete exemption from taxation is answered by the statement that an exemption from municipal taxes, which are of trifling importance, will be granted. Nothing is said about State and national taxes.

The observations of Minister Ybarra on the seventh point, which relates to the revolutionary suit, are satisfactory, unless the suggestion of limitation of the power of the Executive is to be taken to imply that the Executive can not embody in the proposed contract a comprehensive mutual waiver or surrender of all claims, demands,

and rights of action. In view of the numerous and prolonged controversies between the Government and the company, no settlement would be worthy of the name in which both parties did not waive and surrender all claims, demands, and rights of action against each other. If the Executive can not legally treat to this extent a settlement is impossible.

I am informed that A. H. Carner, the custodian of the Bermudez Lake, who has been in Caracas since the present negotiations for settlement began, has sailed or is about to sail, for Trinidad, and, presumably, Guanoco. In the concluding pages of my note to you of December 4, a Spanish translation of which pages you read to and left with President Castro, I insisted upon a discontinuance of shipments of asphalt. I now wish to say that the company will treat any shipment of asphalt as a termination of negotiations for settlement.

Very respectfully, yours, CLYDE BROWN.

[Inclosure 6.]

Mr. Brown to Mr. Russell.

CARACAS, *December 23, 1905.*

SIR: I have just received definite information from Port of Spain, Trinidad, that the Venezuelan boat *Rescue*, which Mr. Carner has used in all his operations, sailed on December 19 for Guanoco with 80 laborers. The carriage of so large a number of men, taken together with Mr. Carner's departure for Trinidad on the 21st can not be construed otherwise than as indicating a purpose to load another cargo of asphalt. I therefore feel warranted in requesting that President Castro assure you that no shipment of Bermudez asphalt will be permitted to leave any Venezuelan port during the pendency of these negotiations. I beg leave to repeat the statement contained in my note of yesterday that the company will treat any shipment of asphalt from the Bermudez Lake as a termination of negotiations for settlement.

Very respectfully, yours, CLYDE BROWN.

[Inclosure No. 7.]

Mr. Brown to Mr. Russell.

CARACAS, *December 23, 1905.*

SIR: I understand that it is your intention to transmit to the secretary of state copies of all notes addressed to you by Minister Ybarra and myself, and I beg leave to be permitted to address a brief note of comment for transmission to the secretary.

As stated in my notes of yesterday and to-day, I shall break off negotiations if President Castro fails to restrain shipments of Bermudez asphalt. As my notes were intended for transmission to Minister Ybarra, I could not with propriety state the full significance of Mr. Carner's preparations to ship asphalt. During the week prior to the date of Minister Ybarra's note of December 21, he gave us repeated assurances that our proposals were substantially satisfactory. During your illness and on Monday the 18th instant, I sent Captain Wright to him to inquire as to the progress our affairs were making. He said that our proposals were satisfactory or so nearly so that he had no doubt of a settlement and that nothing remained except an adjustment of details. His indefinite and evasive note of December 21, making not the slightest approach toward the suggested adjustment of details, was wholly inconsistent with his previous assurances and a sinister interpretation is imparted to it by Mr. Carner's coincident activities.

As the present negotiations were invited by the Venezuelan Government, and as my presence here is the response of the secretary of state to that invitation, I submit that if the presumable intent of the Venezuelan Government to ship asphalt during these negotiations, in order or to make a further profit on the company's capital or to extort from the company concessions of greater hardship is carried out it will not only be a wanton outrage upon the company, but also an act of bad faith toward the Government of the United States.

Very respectfully, yours, CLYDE BROWN.

[Inclosure 8.]

Mr. Brown to Mr. Russell.

CARACAS, *December 23, 1905.*

SIR: The federal and cassation court adjourned to-day until January 8, 1906. The attorney-general made no request for action on the appraisers' report, although, as I have previously pointed out, the company's objections to the report were on December 4 referred to him, and although you yesterday called Minister Ybarra's attention to the fact that the court would adjourn to-day.

My note of yesterday, a Spanish translation of which was on the same day delivered to Minister Ybarra at President Castro's residence, clearly showed that without some action by the court the amount which the company was asked to pay in order to conform to the verdict as expressed in Minister Ybarra's note of December 21 could not be known. The only assurance we have ever had on the subject came from President Castro when he said in the interview of December 7 that we could be sure it would not exceed the amount of the appraisers' report of 1,065,000 bolivars and that we would agree to pay it, whatever it might be, and be the gainer to the extent of any reduction which the court might make. President Castro was assured at the time that the company would not agree to subject itself to such an ex post facto judgment.

The company can see no good reason why a principal point in the proposals of the Government should be left in uncertainty for a further period of at least two weeks. Therefore, following the intention expressed in my note of yesterday, I withdraw the offer that the company pay a sum of money in satisfaction of a judgment in the concession suit and adhere to the terms stated in my note of December 12.

Very respectfully, yours,

CLYDE BROWN.

Mr. Russell to Secretary of State.

[Telegram.]

CARACAS, *January 6, 1906.*

Bermudez Company requests me to ask you to advise company, Philadelphia, that negotiations are broken off, and that Brown sails January 8, and to instruct Bartlett to return to Philadelphia immediately. My report leaves next Monday.

RUSSELL.

Mr. Russell to Secretary of State.

[Telegram.]

CARACAS, *January 6, 1906.*
(Received 5.47 p. m.)

The minister for foreign affairs wrote me a personal letter yesterday in regard to the settlement of the question, which is as follows:

Referring to the last two letters from Mr. Brown, I say to you as follows: That the asphalt company he represents does (not?) appear to place itself in the way of settlement as was indicated, and appears as a victor, not vanquished; appears innocent and not culpable; asks much, gives nothing. In effect the company offers 100,000 bolivars as a royalty, which the Government thinks reasonable, but does not offer to pay the verdict of the court, nor does it offer to pay the losses and damages caused to the Republic by reason of its already proven revolutionary attitude. So that we may (say) it follows, He who gave two and one-half millions to the Venezuelan revolutionists, headed by Matos, does not offer one sou to the country to which he caused so much loss and damage. It thus stands proved that the company is not seeking a settlement.

Mr. Brown considers that this note, taken in connection with the shipments of asphalt, break off negotiations, and he has asked me to request you to so inform the company.

RUSSELL.

The Secretary of State to Minister Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 6, 1906.

Ascertain discreetly whether Crichfield case could be settled by company's consenting to tax or royalty of $1 a ton pure asphalt with release of claim for damages, and extension of railroad concession for a time equal to the period during which business has been suspended—about one year.

ROOT.

Mr. Russell to Mr. Root.

No. 43.]

AMERICAN LEGATION,
Caracas, Venezuela, January 7, 1906.

SIR: I have the honor to inclose you herewith copies of the remainder of the correspondence in the negotiations for a settlement of the asphalt question.

Mr. Brown's letter to me of December 23 was translated into Spanish and forwarded by the minister for foreign affairs to the President, and a copy was forwarded to you in a previous dispatch.

Mr. Brown's letter to me of December 26 (Inclosure A) was not shown to the President, as it was not considered essential if the letter of December 4, copy of which was inclosed in my No. 34, and which was forwarded to the President, was read.

In my desire to obtain something definite regarding Mr. Brown's proposition for settlement I wrote to the minister for foreign affairs the letter of December 28, copy of which is herewith inclosed (Inclosure B). This letter was answered on January 5 (Inclosure C), the receipt of which I acknowledged, and forwarded Mr. Brown's reply (inclosure D).

On December 22 Mr. Carner left for Guanoco, and the shipping news from Trinidad announced the departure for the asphalt lake of the *Rescue* with 80 workmen. This of course meant that asphalt was to be shipped, and I feared that negotiations for a settlement would be imperiled, if not broken off.

At my second interview with the President he announced that he did not care to wade through a long list of documents, but would like to have a concrete proposition from the Bermudez Company, stating seriatim what it offered and what it asked of the Venezuelan Government. The President stated that he would answer these propositions, point by point, categorically. You will see from the correspondence that Mr. Brown's proposals were not definitely answered, but that a memorandum was given setting forth seven principal points on which the Venezuelan Government would treat for a settlement.

I think the letter to me from the minister for foreign affairs shows clearly what were the bases on which the Venezuelan Government had decided to treat, viz:

1. Recognition of the validity of the decision of the court in annulling the Hamilton concession and the award for damages for the nonfulfillment of the provisions of said concession.

2. An amount in cash for the damages caused by the alleged participation of the company in the Matos revolution.

There have been two circumstances which have rendered difficult a settlement of this question. The first is an exaggerated idea of the value of the asphalt business and of the asphalt deposits in the Bermudez Lake, and consequently of the amount of money which the Bermudez Company could offer. The second circumstance is that the impression, as obtained here, is that the report of Judge Calhoun is entirely favorable to Venezuela.

The suit against the company for participation in the Matos revolution is still pending; no verdict has been rendered by the court, but the Government relies greatly on the testimony of Generals Green and Andrews.

I am, etc.,

WILLIAM W. RUSSELL.

[Inclosure No. 1.]

Mr. Brown to Mr. Russell.

CARACAS, *December 26, 1905.*

SIR: In President Castro's interview with Captain Wright on November 22 he stated that the courts, in arriving at the decision of which the company complains, were bound by strict technical rules; that it is the province of the Executive under the laws of this country to administer equity and that it was his intention to administer equity in making a settlement with the company. Acting upon this suggestion and in order to state the equities of the company's case as well as to suggest a basis of settlement, I prepared my letter to you of December 4.

After the conference of December 7, you informed me that you read to and left with President Castro a Spanish translation of the concluding pages of my letter of the 4th, and that, in commenting on statements made by me in other parts of the letter, you offered to give President Castro a Spanish translation of the entire note as soon as it could be completed. President Castro declined this, saying that he preferred a concise statement of the company's proposals. His request was complied with on December 12.

A week ago Minister Ybarra assured us that the proposal of December 12 as modified December 14 was substantially satisfactory, but it now seems reasonable to infer that it is no longer so considered. As I believe that the fairness of the company's proposals will clearly appear in the light of facts stated in my letter of December 4, I beg leave to suggest that a Spanish translation of that part of the letter which was not delivered to President Castro be now sent to Minister Ybarra with a request that President Castro read it. The facts stated therein will show how greatly the company has suffered from the inability of the courts to administer equity and how correspondingly substantial are the concessions which it has offered to make.

Very respectfully, yours, CLYDE BROWN.

N. B.—A Spanish translation of this letter was made to be shown to the President, and on this Spanish copy General Ybarra annotates in regard to the statement contained in paragraph 3, as follows:

"There is a mistake in regard to this. I did not make that statement, but said the matter would be taken to General Castro, and that I could not give an opinion, but could only lay everything before the President."

[Inclosure No. 2.]

Mr. Russell to Minister for Foreign Affairs.

AMERICAN LEGATION,
Caracas, Venezuela, December 28, 1905.

MY DEAR GENERAL: I inclose you herewith a Spanish translation of a letter to me from Mr. Clyde Brown which I would like you to show to the President. Mr. Brown, in his desire to arrive at some definite understanding in regard to the settlement of the pending questions between the Government of Venezuela and the New York and Ber-

mudez Company, requests me to obtain from the Government of Venezuela categorical replies to the propositions contained in his memorandum of the 12th instant. These propositions translated into Spanish are as follows:

"1. La Compañiá propone pagar al Gobierno de Venezuela un inpuesto annual de cien mil bolivares, mediante un contrato especial en que satisfactoriamente queden comprendidos los siguientes puntos.

"2. Restitución á la Compañiá de sus propiedades, es decir, el lago Bermudez, sus talleres, oficinas y demas pertenecientes, garantizandola en el quieto y pacifico goce durante el período que fija el título de minas, cuyo período será de duracion del contrato propuesto.

"3. Restitución á la Compañiá hasta donde sea posible, de todo el asfalto y demas propiedades tomados de ella al tiempo del mandamiento de secuestro, y desde él, y prestará á la Compañiá todo ayuda para descubrir y recobrar todo el esfalto y demas propiedades que hayan salido del inmediato dominio de dicho Gobierno.

"4. La propiedad de la porción de tierras necessarias para el ferrocarril, con sus construciones adjacentes y demas anexidades.

"5. El privilegio para importar y exportar libres de derechos maquinarias, instrumentes, útiles y enseres que razonablemente son necesarios para los trabajos de la mina, para la refineria y para el trasporte del asfalto.

"6. El privilegio para importar y exportar libres de derechos barriles vacios, materiales para barriles, y maquinarias para fabricarlos.

"7. El privilego para cortar y utilizar las maderas necessarias para durmientes, muelles, construccion de barriles y para otros usos razonablemente adecuados ala empresa, sacadas dichas maderas de las tierras baldias sobre las margenes de los rios de Guanoco y San Juan.

"8. El derecho de libre navegacion entre las propiedades de la compañía y el mar por la xuta mas conveniente.

"9. Exencion de todas las propiedades de la compañía de todo impuesto, derecho, o contribucion de cualquiera naturaleza que sean.

"10. Se declara terminado inmediatemente por convenio el pleito relativo a la Revolucion sin ninguna obligacion de pago de dinero por la compañía, la compañía reconocera la resolucion del contrato Hamilton por la sentencia. El Gobierno y la compañía reciprocamente renunciaran a toda reclamacion por danos o perjucios o poor cualquier otro respecto.

"11. El contrato debera ser aprobado por el Congreso Nacional."

In a memorandum to me of the 14th instant His Excellency the President refers to the above-mentioned propositions of Mr. Brown and sets forth seven principal points on which the Venezuelan Government is willing to treat for a settlement. This memorandum is confirmed to me in a note from your excellency of the 21st instant, but no definite statement is given in either memorandum as to whether the annual payment proposed by Mr. Brown is satisfactory, and several other points in Mr. Brown's letter are not definitely answered.

I wish you would kindly say to the President that I think it would be better for a settlement of the question if no shipment of asphalt be made from the Bermudez Lake pending the negotiations. This seems a reasonable request, as the records of the court show that the receiver, since taking possession of the lake, has been operating the property at a loss for every shipment of asphalt.

If no asphalt is taken out from the lake there will be no expense connected with the maintenance and preservation of the property except the expense necessary for employing a trustworthy watchman.

Very sincerely,

W. W. RUSSELL.

[Inclosure No. 3.]

Minister for Foreign Affairs to Mr. Russell.

CARACAS, *January 5, 1906.*

MY DEAR SIR AND FRIEND: Referring to the last two letters from Mr. Clyde Brown, I say to you as follows:

That the asphalt company he represents does not appear to place itself in the indicated way of settlement, and appears as a victor, not vanquished; appears innocent and not culpable; asks much and gives nothing.

In effect the company offers 100,000 bolivars annually as a royalty, which the Government thinks reasonable, but it does not offer to pay the verdict of the court;

neither does it offer to pay the losses and damages caused to the Republic on account of its already proven revolutionary attitude. So that we may summarize as follows:

He who gave two and one-half millions to the Venezuelan revolutionists headed by Matos does not offer one "sou" to the country to which he caused so much loss and damage.

It thus stands proved that the company is not seeking a settlement.

Your affectionate friend,

ALEJANDRO YBARRA.

[Inclosure No. 4.]

Mr. Brown to Mr. Russell.

NEW YORK AND BERMUDEZ COMPANY,
Caracas, Venezuela, January 5, 1906.

SIR: I beg leave to acknowledge receipt of a copy of Minister Ybarra's note to you of this date. As regards the statements contained therein, the previous correspondence speaks and need not be enlarged upon, except that it should be added that a shipment of Bermudez asphalt was made by Mr. Carner from Guanoco on or about December 28, 1905, thus confirming the apprehension expressed in my note of December 23, 1905. It will be observed that this shipment was made at a time when negotiations for settlement were still pending. From the sailing of the *Rescue* and the departure of Mr. Carner for Guanoco on December 19, and 22, respectively, it is apparent that this shipment was arranged for prior to, as it was the occasion of, one of my last letters which Minister Ybarra seeks to represent as expressing an unwillingness to make a settlement.

Very respectfully, yours,

CLYDE BROWN.

Mr. Russell to Secretary of State.

[Telegram.]

PORT OF SPAIN, *January 13, 1906.*
(Received January 17, 1906—12.53 p. m.)

SECRETARY OF STATE: Your cable in regard to Critchfield case received. On (January?) 10th I had conference with the President, and he showed me copy of a new contract proposed by the Venezuelan Government with the company for the railroad concession and also a resolution by which the back taxes against the company have been canceled by the Government. The company has acknowledged the receipt of this proposed new contract, and I would like to know if it is satisfactory to the company. The export tax on asphalt according to the mining code is only 80 cents per ton and your cable speaks of proposition for a payment of $1 per ton and the extension of the railroad concession for one year, whereas in the new contract the railroad concession is given for fifty years. The President told me that he had granted all that the company asked and thought that the matter was settled. There is no agent of the company here at present to consult with.

RUSSELL.

Mr. Russell to Mr. Root.

No. 45.] AMERICAN LEGATION,
Caracas, Venezuela, January 21, 1906.

SIR: I have the honor to inform you that the Venezuelan Government has granted the following concessions:

1. On January 2, to Dr. Vicente Betancourt Aramburu, for the *exploitation* and exportation of woods in the delta of the Orinoco.

2. January 5, to Antonio Jose Salinas, for colonization in the Amacuro delta of the Orinoco.

3. January 9, to Dr. Vicente Betancourt Aramburu, for the exploitation of asphalt, petroleum, etc., in the Orinoco Delta.

These concessions are included in the territory of the old Manoa concession now claimed by the Orinoco Company (Limited), an American corporation.

I am, etc., W. W. RUSSELL.

Mr. Russell to Mr. Root.

No. 60.] AMERICAN LEGATION,
Caracas, Venezuela, March 4, 1906.

SIR: I have the honor to inclose you herewith a copy of the verdict of the federal and cassation court in the suit against the Orinoco Company (Limited), an American corporation. The effect of this sentence is to set aside the Executive decree of General Castro annulling the concession in question, which reverts to the Orinoco Company (Limited), the present owner and transferee of the Manoa Company (Limited).

The present administration, acting in accordance with the decree of annullment, has given concessions lately for about three-fourths of the territory included.

Translation is omitted for lack of time.

I am, etc.,

WILLIAM W. RUSSELL.

[Inclosure.]

Federal court and of cassation.

[The United States of Venezuela—In its name—In the federal hall of the federal court and of cassation.]

HEARD UPON THE BRIEFS OF THE PARTIES.

On March 17, 1905, Juan Padron Estariz sued the American companies, the Manoa Company (Limited), and the Orinoco Company (Limited), before the tribunal of the first instance of the federal court and of cassation, in order that the declaration should be made against them, that by virtue of the failure to comply with their obligations, the condition of dissolution of which articles 1137 and 1142 of the present civil code, which correspond to articles 1110 and 1115 of the code of 1880, has been verified with respect to the contract, which on September 22, 1883, was celebrated by the minister of fomento with Mr. Cyrenius Fitzgerald, for the exploitation of the natural resources in the Orinoco Delta and for the creation of a colony, a contract to which the defendant companies have successively become cessionaries, and the caducity of which was declared as well by executive resolution of September 9, 1886, as by that of October 10, 1900. At the same time the National Government, in the person of the attorney-general, was sued in order that it should agree to the said suit, the plaintiff alleging the perturbation which by reason of the decision of the umpire, H. Barge, he says he is suffering in his rights as proprietor of the mines El Salvador, Nicaragua, La Magdelena, El Encantado, Costa Rica, Yucatan, and La Escondida. The plaintiff accompanied the complaint with copies of the Official Gazette, in which appeared the mining concessions above mentioned; and as it was proven that the said companies have no domicile in Venezuela nor any power of attorney, by an order made on April 3d of the same year, an attorney defendant was named, and the nomination fell upon Dr. Manuel Antonio Ponce (Official Gazette, 9448), for whom, as well as for the attorney-general of the nation, by an order of the 5th of the same month, the term for an answer to the complaint was fixed.

On the day of proceeding to the same, there appeared Dr. Nicomedes Zuloaga, attorney for plaintiff, and Dr. Manuel Antonio Ponce and F. Arroyo Parejo, respectively representing the defendants. The attorney for plaintiff stated that he wished to amend his complaint, and produced the corresponding writing (folio 18), and the tribunal conceded to the parties defendant the legal term for the answer. In virtue of the said amendment the complaint, in so far as it referred to the companies, remained amended in the following terms: "The term conceded to the Manoa Company (Limited) to begin its works constitutes an expressed condition of dissolution, and if said company did not comply by beginning its works within this time, the contract is dissolved in law, and therefore the Government could justly so declare, as it did declare, by its resolution of September 9, 1886.

"By virtue of the representation which I exercise I therefore sue the Manoa Company (Limited) that it shall agree, or if it does not agree that it shall be declared by this competent tribunal, that the National Executive had full right to dictate the said resolution of September 9, 1886, which declared that said contract was insubsistent, or caduco, that in virtue of this resolution said contract could not be revived by the resolution of June 18, 1895, because it would have been necessary to comply with all the formalities required in the formation of contracts with the National Government. I sue the Orinoco Company (Limited) that it agree, or if it does not agree that it be declared, that the contract, having been legally annulled as it was declared on September 9, 1886, it could not be revived in 1895, nor transferred to it, and therefore it has never been legally the owner or cessionary of the Fitzgerald concession."

The stipulated term having expired, in the hearing on May 30 the attorney defendant for the companies, opposed as an exception for previous decision, the lack of character or quality of cessionaries, which is attributed to the defendant companies, which exception was answered at the following hearing and overruled by the decision of June 24, confirmed on August 7 by the hall of only and last instance of the federal court and of cassation.

In the hearing of September 18, set for the answer, there appeared Dr. Nicomedes Zuloaga and Drs. F. Arroyo Parejo and Manuel A. Ponce. The latter opposed as a demurrer the incompetency of the tribunal, the attorney for plaintiff contradicted the same, and by the sentence of October 23 the demurrer was overruled.

At the audience of the 25th of the same month, answer to the complaint was made, there being the attorney-general and Dr. Pedro Miguel Reyes, who, under the order of September 27, had been named attorney defendant of said companies, that he jointly or separately with Dr. Manuel A. Ponce, the principal attorney defendant, might exercise such representation. (Official Gazette No. 9581.) At this hearing the attorney-general, in the name of the nation, agreed to the basis of the suit, because believing that its true object was to obtain a declaration of dissolution of a contract which had never been complied with on the part of the concessionaries. Therewith, this suit terminated with respect to the nation. The attorney defendant of the companies submitted his answer in writing, in which he contradicted the complaint in each and all of its parts, alleging that the suit brought by Padron Ustariz is juridically absurd and illegal because the plaintiff lacks legitimate interest and every right for bringing the same. He invoked and formally opposed res judicata and the incompetency of that tribunal by reason of the subject-matter and of jurisdiction, asking with respect to this point an express decision in the final judgment; proofs having been opened, the plaintiff submitted his, and produced certified copies of various documents existing in the archives in the ministry of fomento and several declarations and acts of tribunals in the United States.

The cause having been fixed, relation having been made, and briefs heard, the court proceeds to pronounce sentence; and

With respect to the previous exception relative to the incompetency of the tribunal of the first instance of the federal court and of cassation,

Considering:

First. That by virtue of Article VII, Law III, of the organic code of the federal court and of cassation, under the authority of which the present action was initiated, there was attributed to the president of the court, in the character of tribunal of first instance, the cognizance of the controversies which result from contracts or negotiations that are celebrated by the President of the Republic.

Second. That the present controversy emanates from the contract which, on September 22, 1883, was celebrated by the minister of fomento, sufficiently authorized by the President of the Republic, with Mr. Cyrenius C. Fitzgerald, the exception of incompetency, which has been invoked, is declared overruled.

With respect to the complaint—

Whereas the authority of res judicata does not obtain except with respect to that exploit has been the object of the sentence.

That the opinion dictated by the umpire, H. Barge, with respect to the claim for damages, which, on account of the resolution of September 9, 1886, was introduced before the mixed commission by the Manoa Company (Limited) and the Orinoco Company (Limited), does not have the effect of res judicata in the present suit because of the distinction between the matter complained of, the nature of the complaint, and the parties which, in one and the other litigation, have intervened.

Whereas by Article V of the contract, celebrated on September 22, 1883, between the minister of fomento and Cyrenius C. Fitzgerald, he obliged himself to commence the works of colonization within six months, counted from the time when the contract was approved by the federal council, in conformity with the law of the matter;

Whereas such clause, which contains a simple term in the convention treated of, does not constitute, as is pretended by the plaintiff, an expressed dissolutory condition;

Whereas in none of the other articles of the said contract does there exist any stipulation which has the character of the forementioned condition; but rather Article XI says that the doubts and controversies arising by reason of this contract shall be decided in conformity with the laws of the Republic and the competent tribunals of the same;

Whereas by virtue of the said antecedents there does not proceed the dissolution in law of the contract;

Whereas the allegation that in distinct epochs, and for analogous reasons of inexecution, the insubsistence of contracts of national interest has been administratively declared, is no efficacy; because as is established by Article V of the civil code of 1881, reproduced in later codes, laws can not be repealed (derogadas) except by other laws, and it is of no use to allege disuse, or custom or practice to the contrary, no matter how ancient and universal they may be, against their observance, under which principle the high federal court rendered its decisions of January 4, 1889, and of June 6, 1898, in the respective suits arising by the executive resolutions of August 3, 1887, and January 4, 1898;

Whereas from the preceding motives it appears that the complaint brought is without virtue of foundation.

For said reasons, administering justice by authority of the law, the said complaint is declared dismissed unfounded.

Given, signed, and sealed in the hall of audiences of the federal court, and of cassation in the capitol at Caracas, on the 1st of March, 1906. Ninety-fifth year of the Independence and forty-eighth of the Federation.

The president, Alejandro Urbaneji; the vice-president, Emilio Constantino Guerrero; the relator, Tomas Marmol; the chancellor, E. Enrique Tejera; vocal, J. I. Arnal; vocal, J. Abdon Vivas; vocal, Pedro M. Brito Gonzales; el secretario, Juvenal Anzola.

The copy. ANZOLA.

Mr. Russell to Secretary of State.

[Telegram.]

CARACAS VIA TRINIDAD,
March 10, 1906—Received 1.10 p. m.

The President has requested me to ascertain if his proposition in the Crichfield case has been accepted by the company.

RUSSELL.

Minister Russell to the Secretary of State.

No. 114.] AMERICAN LEGATION,
Caracas, September 30, 1906.

SIR: I have the honor to inform you that the ministry of fomento has granted a prorogue of eight months on the concession granted January 2, 1906, to Dr. Vicente Betancourt Aramburu for the working

and export of the wood on the waste lands in the Orinoco Delta. This concession is included within the limits of the concession claimed by the Orinoco Corporation, successor to the old Manoa Company.

I am, etc.,

WILLIAM W. RUSSELL.

Minister Russell to the Secretary of State.

No. 120.] AMERICAN LEGATION,
Caracas, October 14, 1906.

SIR: I have the honor to report that on the 12th of this month the ministry of fomento approved the transfer to another party of the concession granted to Gen. Tobias Uribe for exploiting the natural products of the island of Tortola. The same ministry on the same date granted a prorogue of six months on the concession granted to Dr. Vicente Betancourt Aramburu for exploiting asphalt, petroleum, etc., in a certain region of the Orinoco Delta.

Both of the concessions above referred to are comprised within the territory claimed by the Orinoco Corporation, an American corporation.

I am, etc., WILLIAM W. RUSSELL.

Chargé Sleeper to the Secretary of State.

No. 160.] AMERICAN LEGATION,
Caracas, January 12, 1907.

SIR: I have the honor to inclose herewith a clipping from the Official Gazette of January 10, 1907, together with a translation thereof, in which the minister of fomento grants permission to Dr. Vicente Betancourt Aramburu to transfer to the Orinoco Lumber Company the concession granted to him on January 2, 1906, for the exploitation and exportation of timber in the Orinoco Delta.

The greater part of the concession above referred to is comprised within the territory claimed by the Orinoco Corporation, an American company.

I am, etc., JACOB SLEEPER.

[Subinclosure to dispatch No. 160.]

Translation of authorization for transfer of Betancourt contract. Official Gazette, No. 9972, Thursday, January 10, 1907. United States of Venezuela, ministry of fomento. Bureau of territorial riches, agriculture, and stockraising. No. 903. Caracas, January 9, 1907. 96 and 48.

Citizen Dr. Vicente Betancourt Arámburu, present.

The federal executive has considered the representation addressed to it by you ugh the organ of this ministry, under date of 4th of the current month, in which solicit that the corresponding permission be granted to you to transfer to the co Lumber Company the rights and obligations acquired by you in virtue of the act which you celebrated on January 2 of the past year with the National Govern- for the exploitation and exportation of timber in the Orinoco Delta, which was re-formed in its eighth clause by a resolution of this department, dated last.

To the ends which in this particular matter interest you, I make known to you that the Executive has thought well to grant the permission solicited, with the express condition that the said society, Orinoco Lumber Company, agrees to have its domicile in this city, to name a manager who shall represent it here in all matters related with the enterprise, and finally to submit in everything to the prescriptions of the commercial code and the other laws of the Republic.

God and federation, J. M. HERRERA IRIGOYEN.

[United States of Venezuela. Ministry of fomento. Bureau of territorial riches, agriculture, and stockraising.]

CARACAS, *January 10, 1907—96 and 48.*

Let the preceding note be published by order of the minister.

The director, J. M ESPINDOLA.

Mr. Root to Mr. Russell.

DEPARTMENT OF STATE,
Washington, February 28, 1907.

SIR: The Department of State has made the most careful reexamination of the cases hereinafter mentioned, in which American citizens are claiming redress against injustice suffered at the hands of Venezuela.

You are instructed to bring these cases again to the attention of the Government of Venezuela and to urge upon that Government the reasons existing in each case for favorable action, as those reasons are now restated with more full and definite knowledge and with greater precision than has been possible heretofore.

You will call the attention of the Government of Venezuela to the fact that notwithstanding the long and unbroken friendship manifested by the United States for Venezuela; notwithstanding the repeated occasions upon which the United States has intervened as a friend in need to relieve Venezuela from disagreeable and dangerous complications with other foreign powers; notwithstanding the patience and consideration which has always characterized the action of this Government toward Venezuela, the Government of Venezuela has within the past few years practically confiscated or destroyed all the substantial property interests of Americans in that country. This has been done sometimes in accordance with the forms of law and contrary to the spirit of the law; sometimes without even form of law, by one device or another, with the action of the Government apparently always hostile to American interests, until of the many millions of dollars invested by American citizens in that country practically nothing remains.

The first specific claim to be again presented to Venezuela arises from the arbitrary and, it would seem, unlawful expulsion of an American citizen, A. F. Jaurett, who was notified by the Venezuelan authorities on Saturday evening, November 12, 1904, after the closing hours of business, to leave Venezuelan territory.

The reason assigned by the authorities for the expulsion of Mr. Jaurett is that he was notoriously prejudicial to public order. On the following morning—that is to say, Sunday—the prefect of police waited upon Mr. Jaurett and formally ordered him to withdraw from the territory of Venezuela in twenty-four hours. Although Mr. Jaurett attempted to obtain a modification of the order, so that he might be able to arrange his affairs and although the representative of

the Government of the United States accompanied and seconded him in this reasonable request, the Venezuelan Government refused to grant such permission. Mr. Jaurett was therefore obliged to quit the country on Monday morning in pursuance of the order of the governing authorities of Venezuela, leaving behind him his property, and without being given the opportunity to arrange and set in order his business affairs.

The Government of the United States neither questions nor denies the existence of the sovereign right to expel an undesirable resident. It can not be overlooked, however, that such a right is of a very high nature and that the justification must be great and convincing. Otherwise residence in a foreign country would be neither safe nor profitable, for expulsion might at any moment deprive a resident of the legitimate rewards of a lifetime. While, therefore, the existence of the right is not denied, its exercise must be limited. The act is sufficiently harsh in itself. The manner and method of expulsion should not be humiliating, for it is not the purpose to humiliate and inconvenience the resident expelled, but to save the State from dangers resulting from the residence of the undesirable alien.

It is not too much to insist that the person to be expelled be given an opportunity to explain the misconduct whereof he is accused, and that he should be given an opportunity to arrange his business affairs in order that expulsion may not necessarily carry with it forfeiture of property. In no case should the expulsion be decreed and executed after closing hours on Saturday, unless the presence of the undesirable resident is so dangerous to the community as to threaten serious consequences to the State by the mere delay over Sunday.

It is not too much to require that a government exercising the sovereign right of expulsion should state the reasons of such expulsion to the government of the country whereof the expelled is a subject or citizen, because a nation is injured by an injury to a citizen and an unprovoked assault upon him or insult to him necessarily affects the home government. While this would seem to be the requirement of international courtesy it is likewise the standard prescribed by international law. A citation for these views is needless. However, attention is called to the report made by the late M. Rolin-Jacquemyns to the Institute of International Law on the right of the expulsion of foreigners. If it be borne in mind that this report was presented in answer to a call by the Institute of International Law for an examination of the question in what manner and within what limits governments may exercise the right of expulsion of foreigners, and if it be further remembered that Rolin-Jacquemyns was not only an authority in international law but was himself a minister of state, accustomed to handling intricate questions of international law, it will be at once obvious that the report states not only the theory but the usages and customs of international law on this subject.

The right to prohibit the admission into a territory or to exclude from it every individual who is an alien to the political community is a direct consequence of territorial sovereignty. * * * But in regard to the principle of territorial sovereignty there are other principles which tend, not to nullify it but to restrict its exercise, and upon which principles it is desirable that a body of positive rules be established. The first of these principles is that every state forms a part of the community of nations of which the whole makes up humanity. As such, it is not permitted it to isolate itself nor to isolate its territory from all contact with the rest of the

world. In acting thus it would place itself outside the law and outside the community of nations, and would expose itself to an expropriation in the cause of humanitarian interests. The consequence of this principle is that a state can not interdict in an absolute manner to all strangers access to its territory, nor expel indiscriminately or en masse all those who are found there. * * * Besides these general duties toward humanity and toward the community of states, there are some particular duties which are applicable to the exercise of the right of expulsion and which are founded upon the fact that the individual expelled has the double character of a man and of a citizen. In his character as a man he has the right not to be the object of undue severity nor to be injured unjustly in his interests. In his character as a citizen of another state he can claim the protection of his sovereign against these severities of these spoliations. The state which expels, acting thus in virtue of its own sovereignty, is the sole judge of the motives which determine the measure. It does not follow that these motives may be indifferent nor that the right of expulsion can be the pretext of arbitrary violence. (Revue de Droit International, vol. 20, p. 498.)

In concluding his report he states:

From the point of view of international law every government of a sovereign state has, as a general rule, if it judges it necessary in the interest of this state, the right to admit or not to admit, to expel or not to expel, foreigners who wish to enter or who are found upon its territory, as well as to subject their admission or their residence to the conditions which it judges necessary in the interest of its tranquillity or of its security. The exercise of these different rights is, however, subject to restrictions.

Among which he states the following:

1. No State can, without placing itself outside the pale of international law, interdict in an absolute manner the access of all strangers to its territory nor expel indiscriminately or en masse all those who are found there.

* * * * * * *

4. The right of expulsion and the mode of exercise of this right may be regulated by international treaties.

5. But in the absence of treaties the state to which the expelled individual belongs has the right to know the motives of the expulsion, and the communication of these motives can not be refused to it. Moreover, the expulsion ought to take place with all the considerations which are demanded by humanity and the respect for acquired rights. Save in urgent cases, a reasonable time ought to be allowed to the expelled individual to settle his interests. Finally, except in cases of extradition, he ought to be left to choose the point of the frontier from which he prefers to depart the country.

The right of a government to protect its citizens in foreign parts against a harsh and unjustified expulsion must be regarded as a settled and fundamental principle of international law. It is no less settled and fundamental that a government may demand satisfaction and indemnity for an expulsion in violation of the requirements of international law. The cases announcing this right are so numerous that their enumeration would be wearisome. It may be permitted, however, to call the attention of the Venezuelan Government to one case, so similar to the case of Mr. Jaurett that it would require a high degree of casuistry to distinguish them. The case in question is that of Boffolo *v.* Venezuela, and was tried before the Italian and Venezuelan Commission in 1903. The decision of the umpire may be summarized as follows:

A State possesses the general right of expulsion; but expulsion should only be resorted to in extreme instances, and must be accomplished in the manner least injurious to the person affected.

The State exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an insufficient reason or none being advanced accepts the consequences.

The only reasons advanced in the present case being contrary to the Venezuelan constitution, and Venezuela being a country not of despotic power, but of fixed laws, the umpire can not accept them as sufficient.

It therefore appears that not only are writers of theory in accord, but that carefully considered and matured judgments of courts of international arbitration approve and apply the theory of international law to the question of expulsion.

While, therefore, international law fails to justify the expulsion of Mr. Jaurett, and while the method and manner of his expulsion were harsh and inconsiderate, if not inhuman, there is another reason why Mr. Jaurett should not have been summarily and ignominiously expelled, namely, that the constitution of Venezuela prevented such expulsion, and that the actual expulsion was in contravention of the constitutional law of Venezuela.

The decree of the Federal Executive expelling Mr. Jaurett was based upon article 80, section 22, of the constitution of Venezuela, by virtue of which the President is authorized to prohibit, according to his discretion, the entry of foreigners into Venezuelan territory, or to expel from Venezuelan territory foreigners who do not possess an established domicile in the country. A residence of two years is sufficient to establish a domicile in Venezuela, and Mr. Jourett had resided for a period of eight years; he had established himself permanently; he was engaged in commercial pursuits, and he had complied fully with the requirements of the law. The provision invoked by the Executive did not apply to him, because he was a domiciled foreigner, not a foreigner in transit.

To justify, by constitutional law, the expulsion of Mr. Jaurett, the Venezuelan Government has referred to article 80, section 8, which gives to the President the right, "in cases of foreign war, or domestic disturbances, or rebellion in arms against the institutions, upon previous declaration that public order is disturbed, and only for the time of the disturbance, * * * to arrest, confine, or expel from the territory of the Republic citizens or foreigners interfering with the reestablishment of peace." It is at once apparent that these clauses are restricted in their operation to cases of foreign war, domestic disturbance, rebellion in arms, or to interference with the reestablishment of peace. As none of these grounds for Executive action existed in the case of Mr. Jaurett, they are inapplicable.

The expulsion of Mr. Jaurett is, therefore, as unjustifiable upon the principles of constitutional law of Venezuela as it is without defense according to the enlightened theory and practice of international law.

In view of authority and precedent the claim of Mr. Jaurett commended itself to the Department and the attention of the Venezuelan Government has been called to all the circumstances of the case and an indemnity requested.

Mr. Jaurett had been domiciled in Venezuela for many years; had acquired property which was lost to him wholly or in part by the unwarrantable action of the Venezuelan authorities in expelling him from Venezuela without giving him an opportunity to close up his affairs and prevent financial ruin. Mr. Jaurett states his losses at $25,000, and the Government of the United States, finding this sum reasonable, has requested its payment by Venezuela. Hitherto the Venezuelan Government has not given to this claim the care and attention which the Department of State feels it deserves. Delay has taken the place of argument, and the Department feels that the time has come for the settlement of the indemnity.

You are therefore directed courteously but firmly to present the claim of Mr. Jaurett to Venezuela and to insist that the payment of a claim so just in the light of international law should not be longer deferred.

2. The claim of the Orinoco Corporation is one with which the Venezuelan Government has been familiar for the past twenty years and more. For many years conflicting claimants appeared before the Venezuelan authorities to make good their claim to different portions of the territory, under conflicting and inconsistent grants. The Venezuelan Government has at various times, by Executive decree, annulled claims of concession; the courts of Venezuela have held that such Executive action was unable to divest rights conferred upon claimants by acts of the Federal Congress, and upon a recent and solemn occasion, namely, by judgment of the American and Venezuelan Mixed Claims Commission, under the protocol of February 17, 1903, the various acts of the Venezuelan Executive in contravention of the title of claimants, were declared null, void, and of no legal effect whatever.

In view of these circumstances, therefore, an extended examination of the bases of the claim is unnecessary; but for the purpose of calling the attention of the Venezuelan Government to the justness of the claim and the long-suffering of the claimants patiently borne, certain facts are set forth:

On September 22, 1883, the Government of Venezuela granted to Cyrenius C. Fitzgerald, his associates, assigns, and successors, for the term of ninety-nine years, a concession of a certain portion of the delta of the Orinoco, with the exclusive right to develop the resources of the territory granted, which was national property. This concession was approved by Congress May 27, 1884, and on the 14th day of June, 1884, Fitzgerald conveyed to the Manoa Company (Limited) the entire concession, with all his rights thereunder.

On the 1st day of January, 1886, General Guzman-Blanco, envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, entered into a contract with one George Turnbull, an American citizen, for the region previously granted to Fitzgerald, but such contract was to "enter into vigor in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory."

By resolution of the Executive and the federal council, dated September 9, 1886, the Fitzgerald contract was declared insubsistent and no longer in force, and on the following day the contract with Turnbull was ratified by the Executive and the federal council and was approved by Congress on April 28, 1887.

Leaving out minor transactions, it would appear that on May 28, 1895, the Manoa Company, the successor to Fitzgerald's rights, petitioned the Government to acknowledge and reaffirm by decree its rights and ownership of the entire Fitzgerald concession, and the President of the Republic, on the 18th of June, 1895, declared the annulment of the contract for the concession granted to Turnbull; on the same day the Government issuing a decree ratifying and reaffirming the original Fitzgerald grant, as vested in the Manoa Company, and authorizing said company to renew its work of exploitation and development.

On October 17, 1895, the Manoa Company conveyed its entire grant to the Orinoco Company, and the President of Venezuela, on November 20, 1895, recognized as valid this transfer made by the Manoa Company.

Passing from immaterial transactions, it appears that on the 10th day of October, 1900, the supreme chief of the Republic by resolution of that date, promulgated through the minister of the interior, declared the Fitzgerald contract of September 22, 1883, upon which the Orinoco Company based its rights, insubsistent and annulled, and that the decree of June 18, 1895, ratifying the contract after it had been annulled by the decree of September 9, 1886, was ineffectual without the intervention of a new contract, which had not been made; and on May 14, 1901, the Government of Venezuela issued an abstract of certificate from the registry of the records, finding and certifying that the title to the property had been continuously, from the 13th of May, 1888, when the same was granted, until the 14th of May, 1901, vested solely in Turnbull.

Such was the state of affairs when the United States and Venezuelan Claims Commission was organized under the protocol of February 17, 1903. In view of the fact that the various claims and counterclaims based upon the transactions beginning on the 22d of September, 1883, to the date of the Commission, were referred to the Commission and passed upon by this Commission, and inasmuch as the finding of the Commission was as binding upon Venezuela as it was upon the claimants, and in view, furthermore, of the fact that the judgment of the international tribunal in favor of the Manoa Company is a public record, it is unnecessary to do more than call the decision of the Commission to the careful attention of the Venezuelan Government.

It should be stated, however, that the court held squarely that a right vested in the claimants by an act of the Federal Congress of Venezuela could not be vitiated or destroyed by the decree of the Venezuelan Executive; that the cancellation of a concession so granted and safeguarded was a matter for judicial, not political, action. The effect of the decision of the court, therefore, was to reestablish the Fitzgerald concession and to vest in the Orinoco Corporation, as assignee of the Orinoco Company, the entire interest of the original concession of September, 1883.

The rights of the Orinoco Corporation, however, recognized and safeguarded by a decision of an international tribunal, do not depend solely upon the judgment of this tribunal, for on the 1st day of March, 1906, the federal court of Venezuela held squarely, on a suit brought by one Juan Padron Ustariz to declare the Fitzgerald contract insubsistent, that a contract once properly granted could not be annulled by Executive decree.

It thus appears that the Orinoco Corporation is in the enviable position of having its rights recognized by an international tribunal and by the highest constitutional court of Venezuela.

Notwithstanding these solemn adjudications and during the pendency of the action in the Venezuelan federal court the Government of Venezuela granted and conceded, on the 2d of January, 1906, to a Venezuelan citizen a part of the territory embraced within the Fitzgerald concession. And it may be said in passing that this grant of 1906, notwithstanding its utter illegality, was officially recognized by the Venezuelan Government as late as January 12, 1907. On

the 5th day of January, 1906, a second grant was made conflicting with the rights of the Orinoco Corporation. On the 20th day of February a third grant was made of territory within the Fitzgerald concession, and on the 7th day of March, one week after the decision of the court, a further concession of property situated within the Fitzgerald grant was made by the Venezuelan Government.

In view of the circumstances of this case, the repeated favorable adjudications settling the question of title and vesting it securely in the claimants, it would seem that these acts of Venezuela are clearly unjustifiable. The repeated concessions of territory within the Fitzgerald concession evidence an intent either to hinder the company from exploiting the concession, or to destroy the concession by grants inconsistent with its existence. It is needless to say that the Orinoco Corporation can not undertake the exploitation of its concession while its title is thus interfered with, and the constant and repeated granting away of its vested rights by the Venezuelan Government in contravention of international and national judgments offers little encouragement to the investment of labor and capital in the development of their property. The corporation has sought relief in the courts and overcome opposition. It can not enter into a conflict with the Venezuelan Executive.

In view, therefore, of all the facts set forth, you are instructed to request from the Venezuelan Government its assent to an immediate reference to a tribunal of The Hague Permanent Court of Arbitration (unless some other tribunal shall be agreed upon), and on which no national of either country, or of any country interested in the controversy, shall sit, to consider and determine—

1. Whether by the wrongful acts of the Venezuelan Government, its officers and agents, the contract rights of the Orinoco Corporation have been destroyed and the value of its concession impaired or destroyed; and

2. Whether injuries have been inflicted upon the Manoa Company (Limited), the Orinoco Company (Limited), and the Orinoco Corporation, or either of them, by wrongful interference with or trespasses upon them while in the partial or entire enjoyment of their contract rights in the Fitzgerald concession; and to award damages accordingly, payable in American gold and bearing interest from the date of the sentence until paid and with power in the tribunal to fix the time and manner of payment of said awards.

You are also instructed to request that, pending the arbitration, all proceedings in the suit which, it is said, has recently been begun by the Venezuelan Government against some of said companies to annul or cancel said Fitzgerald concession shall be stayed and that the status quo shall be preserved.

3. The third claim is that of the Orinoco Steamship Company, incorporated on January 31, 1902, under the laws of New Jersey for the purpose of acquiring and taking over "as a going concern, the business now carried on by the Orinoco Shipping and Trading Company (Limited), of London, England." This latter company was incorporated in England on the 14th day of July, 1898, and the Orinoco Steamship Company appears as the assignee to any and all rights which the Orinoco Shipping and Trading Company (Limited) had acquired. The English company was itself organized to acquire properties in Venezuela, including concessions and to carry on the

business of steamship transportation. The capital stock of this company was $100,000 and of this all except seven statutory shares was owned by American citizens. As the present Orinoco Steamship Company is owned and controlled in its entirety by these American citizens, it will appear that the claim was largely American in its inception and that it is now wholly American.

On December 12, 1898, the Shipping and Trading Company acquired by purchase the entire assets of two Venezuela corporations. Among these was a franchise of unquestioned validity known as the Grell concession, which provided for the establishment of a regular steamship line between Ciudad Bolivar and the ports of Curacao and Trinidad, British West Indies, and included permission to navigate the Macareo and Pedernales channels of the Orinoco River, notwithstanding the general law of Venezuela prohibiting vessels engaged in foreign trade with Ciudad Bolivar from proceeding otherwise than by the Boca Grande (Great Mouth) of that river. This concession was to have a duration of fifteen years. By executive decrees of October 18, 1898, and September 4, 1899, the transfer of this concession to the shipping company was recognized and approved by the Government of Venezuela.

It further appears that the Government of Venezuela was at that time indebted to the shipping company as the assignee of the Orinoco Red Star Line, one of the Venezuelan corporations above referred to, in the alleged sum of $77,818.01, and in the further alleged amount of $476,732.50 for services rendered the Government, for which bills had been duly submitted and not questioned or disputed, and that the Venezuelan Government entered into an agreement with the shipping company on May 10, 1900. According to the terms of this agreement the Government paid 100,000 bolivars ($19,219.19) down and agreed to pay 100,000 bolivars ($19,219.19) more, and granted an extension of the concession held by the shipping company for a further term of six years—that is, until 1915. In return the company acknowledged full satisfaction for the above claims held against the Venezuelan Government.

By executive decree of October 5, 1900, the law of July 1, 1893, which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the Orinoco River was repealed, thereby destroying the exclusive right to use these channels which the shipping company claimed was conferred by the concession and which, as a matter of fact, they had enjoyed up to that time.

By a later executive decree, dated December 14, 1901, the Venezuelan Government absolutely annulled the extension of the concession granted by the contract of May 10, 1900. At the time of this decree the company, owing to misfortunes which had befallen its other vessels in the troubled times of the revolution, possessed only one steamer available for its La Guaira service. It appealed to the Government of Venezuela for a promise for protection for this vessel, and received in return a note inclosing a copy of the executive decree annulling the extension of the concession. The company, which had hitherto endeavored to carry out its part of the contract irrespective of the decree of October 5, 1900, destroying the exclusive character of the concession which it claimed as of right, seems to have given up in despair and abandoned any further effort to continue navigation between La Guaira and the Orinoco (although it maintained its service

between Ciudad Bolivar and Trinidad until interdicted by the Venezuelan Government, May 31, 1902, on account of the disturbed state of the country), and to have turned first to England and then to the United States for diplomatic relief.

On April 1, 1902, the Orinoco Shipping and Trading Company (Limited), for value received, duly assigned and transferred to the Orinoco Steamship Company, hereafter referred to as the steamship company or the claimant, all its assets, of every sort and kind, including its Venezuelan franchises and properties and all claims and demands in its favor against the Republic of Venezuela. Thereafter, from time to time, the claim of the Orinoco Steamship Company formed the subject of correspondence between the United States and the Government of Venezuela.

As a result of these negotiations, on February 17, 1903, a protocol of agreement for arbitration was entered into between the United States and Venezuela, covering "all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States, or its legation at Caracas." The terms of the protocol provided that "before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."

The claim of the steamship company was duly submitted to the arbitral tribunal so constituted. The claim consisted of four items: (1) For $1,209,701.05, which sum the claimant company reckoned as due for damages and losses caused by the executive decree of October 5, 1900, said decree having, as the company affirmed, annulled its exclusive concessionary right; (2) for 100,000 bolivars, or $19,219.19, overdue on account of the settlement contract of May 10, 1900; (3) for $147,638.79, at which the claimant company estimated its damages and losses sustained during the revolution and the value of services rendered by the company to the Government of Venezuela; (4) for $25,000 for counsel fees and expenses incurred in protecting and pursuing its rights.

The commissioners appointed by the United States and Venezuela having disagreed, the claim was referred to the umpire, Doctor Barge, who awarded $28,224.93 United States gold to the claimant company, this being the amount which he found due for services, etc., rendered the Venezuelan Government by the claimant company subsequent to the transfer to the claimant of all the rights of the shipping company. Doctor Barge rejected all the other contentions of the claimant, especially refusing to allow damages for the annulment of the alleged exclusive concession held by the shipping company.

After holding that he had jurisdiction over the case, the umpire rejected the first item in the claim of the company—the claim for damages caused by the annulment of its exclusive franchise—on three

grounds: (1) Because in the opinion of the umpire the concession did not confer the exclusive right claimed by the company; (2) because Article XIV of the concession bars recovery before an international tribunal, even although the exclusive right claimed by the company existed, and even although Article XIV did not prevent the umpire from taking jurisdiction of the case, for by Article XIV the concessionary pledged himself not to submit any dispute or controversy which might arise with regard to the interpretation or execution of the contract to any but a Venezuelan tribunal; (3) because the transfer from the Orinoco Shipping and Trading Company to the claimant had never been notified to the Government of Venezuela in accordance with the terms of Article XIII of the concession.

The second item in the claim of the company for 100,000 bolivars was rejected by the umpire, first upon the suggestion that it had not been satisfactorily proved that the sum claimed was then due, but principally upon two of the grounds already given for rejecting the company's principal claim in regard to the exclusive franchise, namely, on account of the provision of the contract binding the company to seek redress only in the local courts, and because the Venezuelan Government had not been notified of the transfer of the claim from the Orinoco Shipping and Trading Company to the present claimant.

Of the various sums, amounting in all to $147,638.79, which, grouped together, constitute the third item in the company's claim, the umpire allowed $28,224.93 and disallowed the remainder. Of this amount about $60,000 appear to have been disallowed for reasons going to the merits of the claim, and $49,978.76, practically all the remainder, were disallowed upon the ground that the transactions upon which the claim for this sum was founded took place prior to the transfer from the Orinoco Shipping and Trading Company to the claimant, and the transfer had never been properly notified to the Venezuelan Government.

The item of $25,000 for counsel fees and expenses shared the fate of the greater portion of the company's claim and was disallowed.

It is a reexamination of this award before an impartial and competent tribunal that the claimant now asks.

To this reasonable request that the case of the Orinoco Steamship Company be reopened and that the case be submitted in its entirety to an impartial and international reexamination, the Venezuelan Government sets up as a bar the fact that this decision of the American-Venezuelan Mixed Claims Commission is final, and that to reopen a decision of a court of arbitration would be to disregard the finality of such decision.

To this there is an obvious and very reasonable reply, namely, that a decree of a court of arbitration is only final provided the court acts within the terms of the protocol establishing the jurisdiction of the court, and that a disregard of such terms necessarily deprives the decision of any claim to finality. In this individual case the protocol specifically stated that "the commissioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."

The equity meant is clearly not local equity, that is, not necessarily the equity of the United States or the equity of Venezuela, but the

spirit of justice applied to a concrete question irrespective of local statute, ordinance, or interpretation.

Attention has already been called to the expressed terms of the protocol defining the jurisdiction of the commission to be established thereunder, and it will be recalled that all claims owned by citizens of the United States against the Republic of Venezuela were to be submitted which had not been settled by diplomatic agreement or arbitration between the two Governments. It was, furthermore, stated in express terms that these claims so owned, unsettled, and outstanding should be "examined and decided" by the mixed commission to be appointed. Nevertheless, in express violation of the terms of the protocol, claims amounting in the aggregate to about $70,000, partially for money loaned and admittedly due to the claimant company, partially for services rendered by the claimant's vessel to the Venezuelan Government and for damages for the detention of such vessel, were disallowed by the umpire.

To say that these claims should be rejected for lack of jurisdiction would be as was said by Ralston, umpire, in the Martini case (Ralston's Report, p. 841), "equivalent to claiming that not all * * * claims were referred to (the commission), but only such * * * claims as have been contracted about previously, and in this manner and to this extent only the protocol could be maintained," and it is equally vicious in law and equally disastrous in fact to the claimant to assume technical jurisdiction over the claim and then disallow it, evidently on its merits, because of the clause in question, as the umpire did. For this Government can never admit that a claim unpassed upon by a Venezuelan court is not a claim which it has a right to protect and enforce, and by protocol to submit to an international convention to the end that such claim in its entirety be passed upon, or to quote the exact language of the protocol, be "examined and decided" upon its merits irrespective of any contract or waiver which the holder of the claim may, in his private capacity, have made with the contracting government.

And not only did the umpire in disallowing these claims upon the ground of the Calvo clause, do violence to the terms of the protocol in the manner already stated, namely, by refusing to examine them on their merits, but also by disallowing these claims he violated the express provisions of the protocol that all claims submitted should be examined in the light of absolute equity "without regard to objections of a technical nature, or of the provisions of local legislation."

It is difficult to see how the umpire could more clearly have disregarded the plainest principles of justice and equity than to disallow the claims of the claimant upon the ground that it had violated the Calvo clause in seeking redress by international reclamation, when admittedly the defendant Government violated every provision of the contract by totally annulling it. To quote the language of the umpire, "in the face of absolute equity the trick of making the same contract a chain for one party and a screw-press for the other never can have success." (Ralston's Report, p. 21.) And it is doubly difficult to understand the reasoning by which one party to a contract may violate all its terms by annulling it and yet refer to those very terms as existent and measuring the rights of the claimant seeking redress.

Again the umpire disregarded the express terms of the protocol above quoted when he gave as another reason for disallowing these same claims, amounting to about $70,000, that either by the terms of the contract with the company or by provision of Venezuelan law it was necessary for the claimant to notify the Venezuelan Government, the other party to the contract and the debtor of the transfer of the claims in question from the Orinoco Shipping and Trading Company to the Orinoco Steamship Company, for a clearer illustration could hardly be found of a stickling for technicalities and disregard of general equity than this ruling. Absolute equity in Anglo-Saxon countries does not require the creditor to notify the debtor of the transfer of a debt provided said transfer does not injuriously affect the rights of the debtor, and absolute equity does not mean the technical provision of the Venezuelan law or the technical requirements of the contract between the parties. Absolute equity assimilates knowledge to specific notice according to the requirements of local legislation. Of the transfer in question the Government had actual knowledge.

While this Government believes that such a disregard of the express terms of the protocol justifies a reopening and a resubmission of the entire case to an impartial tribunal there are other reasons which tend to discredit the judgment in its entirety.

The claimant always contended that the franchise granted by the Grell contract was an exclusive franchise to ply between a foreign port and Trinidad and to use at the same time the channels which were exclusively reserved to coastal trade. In other words, the company was to engage in foreign commerce, but was to possess at one and the same time the right to use certain channels which it would not have had the right to use but for the concession. While this would in itself have been a considerable advantage, the benefit of the contract, according to the claimant, consisted in the fact that the company was to possess the exclusive right to navigate, to trade with foreign ports, and yet to use the channels reserved to coastal trade, and that during the continuance of the concession to the company no like privilege would be extended to any competing company.

In the opinion of the umpire the exclusiveness was not a matter of law, but he overlooked the important and fundamental point that the company was to exercise exclusively the right and privilege specified in the concession until such time as the Venezuelan Government should fix certain points of transshipment and make the necessary installation. Supposing that the umpire was right in his construction of the contract, which is not admitted, that the exclusiveness claimed by the company did not exist in law, it necessarily follows that the exclusiveness existed in fact, and the company was therefore entitled to the exclusive right claimed until the Venezuelan Government divested that right by establishing points of transshipment and making the necessary installations. In other words, the fixing of these various points of transshipment and the establishing of the necessary installations were made a condition precedent to the deprivation of any exclusive right which the company, as a matter of law or as a matter of fact, enjoyed.

The judgment of the umpire, therefore, disregarding these simple *yet essential* considerations is wholly unacceptable. He did, indeed,

take jurisdiction, but the error committed was so gross and so palpable that this Government can not ask its citizens to accept this judgment as a finality.

Although these contentions have been called at various times to the attention of Venezuela and the request made courteously and with confidence that the claimant's case in its entirety be submitted to a reexamination before a competent and impartial tribunal, the Venezuelan Government has interposed curtly that "the decisions of the commissioners, and in the event of their disagreement, those of the umpire, shall be final and conclusive." At the very moment and almost in the same breath, that Venezuela declared the finality of the judgments of the commission she has been busy protesting Belgian and Mexican awards, although the protocols under which these two commissions were established provided "the decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive." It would appear, therefore, to a disinterested person that judgments in favor of Venezuela are final and conclusive, but that judgments adverse to Venezuela are not final nor at all conclusive.

In this conflict between theory and practice this Government not unnaturally looks to the practice of Venezuela.

It is, however, apposite to call the attention of the Venezuelan Government to the fact that the United States has granted on various occasions the request that it now confidently makes; that the United States at the request of Mexico set aside an unjust arbitral award, and that as Venezuela may doubtless recall, at its express and distinct request the United States set aside the findings of the United States and Venezuela Commission of 1866 and appointed a new commission under a convention signed in 1888, whereby a saving resulted to Venezuela amounting in the aggregate, including interest, to nearly a million and a half dollars, as compared with the findings of the first commission.

In view, therefore, of the circumstances of the case and the express violations of the terms of the protocol, or errors in the final award, arising through gross errors of law and fact, and in the light of the history of both nations in the matter of arbitral awards, this Government insists upon and confidently expects a reopening and a resubmission of the entire case of the Orinoco Steamship Company to an impartial and a competent tribunal.

4. The claim of the New York and Bermudez Company against Venezuela is one of long standing in the Department, and the details of the wrongs suffered by the unfortunate claimants are familiar alike to the diplomatic and judicial authorities of Venezuela. In order, however, that the facts of this case may be presented and the attitude of this Government justified, the origin, history, and present status of this case are set forth briefly and pointedly.

The company claims the ownership of an asphalt lake situated in the State of Bermudez by three separate and distinct titles, each one of which was lawfully acquired from the Venezuelan Government. Venezuela has by judicial process canceled the first of these titles, and, as an incident to the cancellation of this one title, has taken possession, which it now retains, of the properties obtained under the second and third titles.

On September 15, 1883, one Horatio R. Hamilton, an American citizen, obtained from Guzman Blanco, President of Venezuela, for the period of twenty-five years, a concession or contract for the exclusive exploitation of asphalt and of the uncultivated lands in the State of Bermudez. The concession gave "the right to explore and exploit the natural products of the forests," consisting principally of woods and resins, "existing in the uncultivated lands of the State of Bermudez." Article 2 granted "the right to exploit the asphalt in the said State of Bermudez;" article 8 provided that during the period of twenty-five years "the Government will not grant any similar concession in the State of Bermudez to any other person;" article 10 provided that the contract could be transferred upon notice, and the contract specifically provided in article 9 that "in case of nonfulfillment of any of the stipulations expressed, this will annull the present contract ipso facto." In other words, the contract was a grant of the right to explore and exploit within the State of Bermudez during a period of twenty-five years, and that in case of failure to exercise this right, or to perform the conditions expressed in the concession, the contract was to be null and void.

To this contract there was afterwards, on October 19, 1883, appended an additional article, known as the "first additional article," which imposed duties upon dyewoods or building woods which the concessionary, Hamilton, may exploit or export.

On June 5, 1884, the Hamilton contract and the additional article were approved by the Federal Congress, and the concession and its supplement were published in the Official Gazette July 21, 1884, thereby acquiring the force and effect of law.

On May 30, 1884, a so-called "second additional article" was entered into between Hamilton and the minister of fomento, by which the concessionary "bound himself to channel for exportation and importation one or more of the rivers of the State of Bermudez." In case Hamilton canalized according to the terms of the article he was to enjoy the exclusive right of navigation on the rivers that he may channel, and was to collect a tax for navigation thereof. It appears that the parties had in contemplation the construction of a railroad, and the last clause of this second additional article provides that "he will have the same rights in case of his constructing a railroad," from which it will appear that Hamilton did not bind himself to construct a railroad, but that should he do so he was to enjoy certain rights and privileges which otherwise would not be his.

It is important to note that this second additional article was not attached to the contract when the latter received the approval of Congress, and that the second additional article has never been approved by the Congress of Venezuela. In other words, the second additional article was a separate and distinct contract; that it had no connection with the first contract or the first additional article; that it was merely a contract between the same Hamilton and the Venezuelan authorities; separate and distinct in its origin, it has remained separate and distinct; it was based upon a separate and distinct consideration; it therefore rose and fell by itself. It is difficult to see how a performance of this second additional article could affect favorably the Hamilton concession. It is also difficult to understand how a failure to comply with the conditions of the article could in any way invalidate or concern a previously existing contract, separate and distinct

in its origin, and which had no necessary relation to or connection with the original concession.

On October 24, 1885, the New York and Bermudez Company was incorporated under the laws of New York, and on November 6, 1885, Hamilton assigned his contract to them, including the additional articles.

This assignment was approved by the Venezuelan Government December 9, 1885. By these various transactions the New York and Bermudez Company succeeded to all the rights in the Hamilton concession and its supplements. The New York and Bermudez Company, however, was unwilling to rest its right to exploit asphalt under the Hamilton concession. Its secretary made application, in 1888, to obtain a mining title to the asphalt deposit, and in conformity with the law of mines then existing, the secretary obtained a title from the President of the Republic and the federal council on December 5, 1888. Two days later a definitive deed was executed to the property involved in the concession, which was to run for a period of ninety-nine years, and on August 1, 1893, the secretary of the company and his wife made an assignment to the company of the title, which had been acquired originally and solely for the company's benefit.

But the company did not rest here in its endeavors to obtain a perfect title to the property in question. On October 8, 1888, the secretary, in the name of the company, applied for a title to the "wild lands that comprise the mines already mentioned for the use of exploitation work." On December 14, 1888, a final deed was granted to the lands "in favor of the New York and Bermudez Company."

It is evident, therefore, that the company asserts its right to the asphalt lake by three separate and distinct titles: First, the Hamilton concession, giving it the exclusive right to exploit asphalt in the State of Bermudez for twenty-five years from September 15, 1883; secondly, the right to exploit the asphalt lake for ninety-nine years from December 14, 1888, under the mining title; and, thirdly, under the wild-lands title the fee simple to the land surrounding and covered by the lake.

It is unnecessary to state in detail the various interruptions to which this company was subjected. Suffice it to say that on January 4, 1898, without any notice to the company or any judicial proceeding, President Crespo annulled, by executive decree, the Hamilton concession. As national (August 23, 1898) and international courts (the American-Venezuelan Mixed Commission under the protocol of February 17, 1903) have decided that a validly granted concession can not be annulled by executive decree, it is unnecessary to discuss the various attempts to carve out from the company's property the mines known, respectively, as the "Venezuela" and the "Felicidad," because if title was in the Bermudez Company, it could not be in the claimants of the "Venezuela" and the "Felicidad" at one and the same time. This was also the view of the high federal court which decided in January, 1904, that a suit brought by the claimants of the alleged Felicidad mine possessed no title to the property in question because it was wholly included within the Hamilton concession, which concession, notwithstanding executive interference, was still valid and subsisting.

It thereupon occurred, it would seem, to the Venezuelan authorities, that no act of unquestioned validity could be taken against the New York and Bermudez Company while the Hamilton title was outstanding and valid. On July 20, 1904, the attorney-general of Venezuela therefore instituted proceedings in the high federal court for the cancellation of the Hamilton contract and the sequestration of the property. The grounds for this cancellation, simply expressed, was nonuser, for, although the concession had been in existence for twenty-one years, the company had restricted itself, according to the attorney-general, solely and exclusively to the exploitation of the Bermudez asphalt lake, thereby neglecting to fulfill the other obligations of the contract, in consequence whereof the exploitation of the natural products of the State of Bermudez, other than asphalt, had remained stationary for upward of twenty years. The exploitation of asphalt had been conducted, it was said, upon so small a scale that the returns to the Government had been ludicrously small. It may be said, in passing, that the company received little or no encouragement to mine asphalt when Venezuela had parceled out portions of its property to other claimants. And finally it was alleged that the company had not canalized any of the rivers in the State, which was a breach of the contract. The attorney-general therefore brought suit for the dissolution of the contract and for the recovery of damages incurred by reason of the company's failure to execute the contract "according to the just findings of appraisers and calculated in accordance with the basis established by the first additional article."

It can not well escape notice that the first additional article laid a duty upon dyewoods and building woods which the company might export, and that asphalt found no place in the first additional article. It is also a matter of record that the right or duty to canalize arose by the second additional article which never was an integral part of the contract, and which never received the approval or ratification of the Venezuelan Congress. Asphalt is not mentioned. It also will be borne in mind that the second additional article gave an exclusive right of navigation on the rivers that Hamilton might channel. As the Venezuelan Government disregarded the exclusiveness of the article, it is difficult to see how the breach of this condition, subsequent to the breach of its express terms by the Venezuelan Government could give the Government any right of action against the Hamilton concession, even supposing that the second additional article was, as it was not, a constituent part of the Hamilton concession.

While it would serve no useful purpose to detail these proceedings at length, it is necessary to consider the sequestration proceedings and the main suit by which the Hamilton concession was annulled. It seems to have been a matter of great importance to the Venezuelan Government to obtain possession of the asphalt lake before the Hamilton concession could have been canceled by decree of a court of justice. Why the possession of the lake was so urgent pending proceedings does not appear, but the Government decided that its possession was essential. Therefore the Hamilton concession was considered by the attorney-general as a lease, although there was no rental of any kind reserved, and although the characteristics of the concession point to a grant rather than to the relation of land-

lord and tenant. However that may be, the court construed the concession to be a lease, and under article 373 of the code of civil procedure sequestration of the property was decreed. Reliance was placed on section 7 of article 373, which would seem to the disinterested to apply solely to the case of a lease, not a grant. The exact wording of this section follows:

Sequestration may be decreed:
7th. Of the property leased, if the defendant is sued for default in payment of rental; on account of the property becoming deteriorated; or on account of having failed to make improvements to which he is bound by the contract; provided any of the circumstances be proved in the manner indicated in article 368.

It is not easy to understand how this section could be made the basis of sequestration proceedings, because, supposing, which is not admitted, that the grant was a lease, the defendant was not sued for default in the payment of rental, because no rental was reserved. The property was not deteriorated, because the property was in its natural state, and it is not the nature of trees and rivers to deteriorate. The company did not fail to make improvements to which it was bound by the contract, because no improvements are specified in the original concession, and canalization appears solely in the second additional article, which was not a part of the Hamilton concession. If it be supposed, which can not be admitted, that the additional article, unratified by the Congress, was a part of the original Hamilton concession, a sufficient answer to the claim of the Government is found in the fact that Venezuela disregarded the terms of the additional article in granting to others what was exclusively reserved to Hamilton by the exact terms of the second additional article. The attorney-general placed great reliance upon the failure to make improvements as a basis for the sequestration proceedings, the only basis which would seem to support such proceedings in law, although in fact, as is shown, no cause existed.

Article 368 of the code of civil procedure is referred to as giving the court the right, upon request of any of the parties, to appoint a sequestrator pending the trial of the cause of action. There are three conditions mentioned when such sequestrator may be appointed: First, when necessary to prevent the alienation of the subject-matter of the suit, and it does not appear that the Bermudez Company sought to alienate, but rather to retain, the subject-matter. Second, the judge may grant sequestration of determinate properties. It is true that the properties here were determinate, but they were not leased properties; they were properties held under a grant of land and mining titles, not under the Hamilton concession, for under the Hamilton concession the rights of enjoyment were indeterminate, not determinate. No importance, however, is attached to this section, because the right of sequestration would seem to exist, if at all, under article 373 previously quoted. Third, the judge may require deposit of security, and, in default thereof, order the attachment of sufficient property. The court never demanded security from the company before issuing an order. Indeed, the motion for the appointment of a sequestrator in alleged accordance with articles 373 and 368 was made in the absence of the company's agent without his knowledge, and the order appointing the sequestrator was made and sought to be executed before the company knew of the pendency of the motion. Comment upon ex parte proceedings of this nature involving all

the property of the New York and Bermudez Company is unnecessary; and no comment is necessary or required upon the appointment, without opportunity to object and without bond, of the bitterest enemy and business rival of the company, Mr. A. H. Carner, as sequestrator. It should not be omitted, however, to mention that the sequestrator was placed in possession of the property sequestered by a show of force. From which it will appear that the Government asserted a right to which it was not entitled, that it made the order witout notice to the defendant, and executed the writ with armed force. It is a matter of common knowledge that the sequestrator is still in possession of the property sequestered, that he works the mines of the New York and Bermudez Company without responsibility to them, and without the duty to account.

However important the sequestration proceedings were, and however unjustified they may be in law or in fact, they were but an incident in the case. The purpose of the suit as originally instituted by the attorney-general was to obtain the cancellation of the Hamilton concession, and damages for the breach of the concession. It would serve no useful purpose to relate in detail the proceedings in the court, because such proceedings are a matter of record and the original documents are in the possession of the Venezuelan Government. It is sufficient to note that the Hamilton concession was canceled August 7, 1905, by the decision of the federal and cassation court, the court of last resort of Venezuela.

An examination of the proceedings shows that the Hamilton concession was canceled for nonuser. It was not and could not be canceled for nonexploitation of the asphalt, because the gravamen of the charge was that the New York and Bermudez Company had restricted itself solely to the exploitation of asphalt. The reason for the cancellation is to be found elsewhere, namely, the failure during a period of twenty years to exploit the natural products of the territory included within the concession. It will be observed that the grounds relied upon appear in the first and the second additional articles. The first additional article gave the company the right to cut and exploit or export dyewoods and building woods upon payment to the Government of certain specified sums. It is admitted that the company did not continuously devote itself to cutting dyewoods or building woods. The chief grievance, however, of the Venezuelan Government consisted in the fact that the rivers were not canalized, as they might have been under the second additional article.

It is stated without hesitation and with great insistence that the second additional article was neither in law nor fact a part of the original Hamilton concession, and it is a matter of fact that it was never ratified by the Congress as a part of the concession. If it were a subsisting and valid agreement, it was an independent agreement subject to be annulled or set aside in a separate and proper proceeding. But it further appears that the Venezuelan Government disregarded the terms of this second additional article in violating the exclusive rights of navigation granted to Hamilton by granting to one Pinelli, in 1887, a concession of certain navigating privileges included within the territory set aside to Hamilton by the second additional article. This was an express repudiation of the second additional article, and it is difficult to see how a Government can repudiate a contract and at

the same time make its repudiation a basis for assessing damages upon the concessionary. It is impossible to comprehend how the failure to improve or to canalize a river when the right to do so was expressly annulled by the Government could be made the basis of sequestration proceedings as previously stated, when Hamilton's original concession was not a lease, when the second additional article was not a part of that instrument even supposing it to be a lease, and when the repudiation of the second additional article by the Venezuelan Government destroyed the life of that article.

Supposing that the Hamilton concession was properly canceled, the Government seeks damages for its breach, and finds the measure of damages contained in the first additional article. A careful reading of that article shows that it related merely to the exploitation and exportation of dyewoods and building woods. It did not refer to the right to enjoy and exploit the other natural resources specified in the concession. It is difficult to see how a clause which specified the duties which the concessionary was to pay to the Government for cutting and exporting certain woods can be made the basis of damages for not doing so; for it is evident that the company would have to pay the Government the sum specified upon cutting and exploiting; if the company did not cut the woods in question there was nothing to pay. There was clearly no damage to the Government and there was no damage to the wood, for it still continued standing and might be made the subject of subsequent grant. But if a measure of damages is necessary where no damage has peen suffered, it is found in article 9 of the concession rather than in the first additional article. Article 9 specifically provides that "in case of nonfulfillment of any of the stipulations herein expressed this will annul the present contract ipso facto." In other words, the violation of the contract carried its own penalty with it, namely, forfeiture. In view of these circumstances it is unnecessary to discuss further the question of damages.

Again, supposing that the Hamilton concession was properly canceled, it follows that only the interest was or could be affected by the decree of cancellation which Hamilton and the company and his assignee held in the asphalt lake by virtue of the Hamilton concession of September 15, 1883. As, however, the company held the lake by a separate and distinct mining title, the validity of which has never been questioned, and inasmuch as the company held the lands surrounding and covered by the lake in fee by virtue of a wild-lands title, which likewise has never been questioned, it would seem that the company possesses at this very moment the right in law to exploit, manufacture, and export asphalt from its property by virtue of these two unimpeached, unquestioned, validly existing titles.

This fact was admitted by the attorney-general in argument before the court. The court was aware of the existence of these titles, for they are a matter of public record and they are published in the Official Gazette. The attorney for the defendant company stated in open court the existence of these titles and that the very existence of them was and must of necessity be a bar to the forfeiture of the property granted by these titles. The attorney-general stated that these titles were not then in litigation, because he was proceeding against the Hamilton concession, not against the land and mining titles.

It would appear, therefore, that the cancellation of the Hamilton concession, improperly called a lease, has been made the pretext to obtain possession of the asphalt lake, the title to which is in the company not by virtue of the Hamilton concession, because that was a right of enjoyment for the limited period of twenty-five years, but by virtue of the mining title and the title in fee to the lands covered by the lake.

In view, therefore, of these facts and circumstances, set forth briefly, but in sufficient detail, the seizure of the property belonging to the company by unquestioned and subsisting titles is a harsh and unjust deprivation of property, and the continued possession and exploitation of these mines by a sequestrator or by any person other than the lawfully authorized agent of the company is a daily and growing grievance. As the company has failed to obtain the protection of courts of justice, and as the company continues to be deprived of its property, this Government feels itself constrained to protest firmly but courteously through diplomatic channels against the continuance of a wrong perpetrated by the abuse of judicial process. This is not the first time that this matter has been called diplomatically to the attention of the Venezuelan Government; but inasmuch as the repeated requests of this Government have failed to restore the company to its just rights, the Government again calls attention to a state of affairs which should not and can not be permitted to exist.

While this Government is sure of its position and states that a grave injustice has been done the company, still this Government is willing to submit the entire case upon its merits to an impartial and competent tribunal in order that the rights of the company may be ascertained and its wrongs redressed by the judgment of others than parties to the issue. This Government, therefore, requests an international arbitration of the case of the New York and Bermudez Company against Venezuela.

5. The Government of Venezuela is also familiar with the claim of the United States and Venezuela Company, commonly known as the Crichfield claim, and, being familiar with the case, the Venezuelan Government will not need to be informed that the actions of the Government have so seriously interfered with the peaceable and profitable operation of the mine and the railroad that the company has for some time past abandoned all work.

The essential facts of the case, briefly stated, are, that General Castro, on June 18, 1900, granted to one Guzman a concession and definitive title to the asphalt mine called Inciarte, located some 70 miles west of the city of Maracaibo; that Doctor Guzman, on February 5, 1901, sold the mine for $25,000 to one George W. Crichfield, a citizen of the United States, who was acting as the agent of a syndicate composed of American citizens, afterwards incorporated, June 12, 1901, in New Jersey, under the name of the United States and Venezuela Company, for the express purpose of operating the concession. All formalities required by the law were complied with; the sale was recorded on the date thereof in the public registry at Maracaibo; later, on March 22, 1901, the sale was also placed on record in the ministry of fomento, and on February 25, 1902, the concession was validated by the Congress of the United States of Venezuela. It will be remembered that at the period of the concession General Cas-

tro was provisional president of the Republic; that Congress was not in session, and that upon the assembling of Congress the provisional president presented to it an account of his labor, political and administrative. A vote of confidence was immediately passed, and all that which the President had done during the provisional presidency was expressly ratified, as appears from the language of the resolution of Congress:

The Congress of the United States of Venezuela, having examined scrupulously the message which has been sent by Citizen-General Cipriano Castro, provisional president of the Republic, giving an account of his labor, political and administrative, agrees:

First. To give our approbation to all of the acts executed by the Citizen-General Cipriano Castro during the period in which he has exercised the provisional presidency of the Republic.

As this weighty approbation and ratification of the acts of the President is a matter of public record it need not be further referred to.

It should be stated, however, that Crichfield did not obligate himself to take title to the mine and to pay the purchase money, except upon certain condition, namely, that the Venezuelan Government grant to Crichfield a concession for the building and operation of a railroad; and it further appears that President Castro was advised that the consummation of the purchase of the mine was conditioned upon the grant of the right to construct the railroad. It also appears that the railway concession was granted by President Castro through his authorized agent, the Venezuelan minister of public works, on April 20, 1901.

There were certain important and fundamental conditions specified in this contract: First, that the grantee was to enjoy immunity from all national taxes or contributions, with the exception of certain stamp fees and mining dues; secondly, that the grantee was exempted from all import duties on the material, etc., required in the construction of the railroad, the operation of the mines, and in refining and transporting the products of the mines; third, the construction of the railroad was to begin within six months from the date of the concession and was to be completed within one year after commencement; fourth, the concession was for the period of fifty years, at the expiration of which the railroad, with rolling stock and all other appurtenances, was to be turned over in good condition to the Government.

The United States and Venezuela Company became domiciled in Venezuela on August 1, 1901, and on January 2, 1902, Crichfield transferred to it the railroad concession and mine, said transfer being approved by the Venezuelan Government on January 30, 1902.

From this brief statement of the origin and terms of the concession it appears that the claimant did not receive a gratuity; that he gave value for the property acquired; that he undertook to construct a railroad to connect the mine with the port, a work of great difficulty owing to the physical conditions of the country, and that he bound himself to deliver the railroad in good condition at the expiration of fifty years to the Venezuelan Government. The advantage expected by Crichfield was not to be retained by him solely, for Venezuela was to receive the benefit of the investments and in the course of time was to become the owner in fee of a railroad. And it should be stated in this connection that the claimant has, under this concession, expended about $600,000 in gold, has canalized the rivers and made them navigable, cleared the forests, constructed and operated the

railroad, and has built and put in operation a large mining and refining plant, furnishing steady employment to about 1,000 Venezuelans.

While the company did not anticipate any of the difficulties which have since arisen, it sought, by a careful and precise statement of the rights and privileges it was to enjoy and the duties it undertook to perform, to avoid future complications which might otherwise result from an honest difference of opinon as to the nature and extent of these rights, privileges, and duties. For this purpose it was expressly stipulated in Article XII of the concession that—

> Neither this enterprise nor the products of its mines can be burdened with any kind of national taxes or contributions, except those levied by the department of public instruction and the dues prescribed by the *now existing law* relating to mines.

This statement of the rights and obligations would seem to need no interpretation. As no dispute has arisen concerning the stamp fees, it is unnecessary to do more than mention the provision, and it has never been cliamed that any of the new taxes imposed since the date of the concession have been stamp fees.

To measure the rights and obligations of the parties under this concession, it is only necessary to consult the mining law of 1901, which was in force at the time of the concession. Under that law the only tax was a hectare tax amounting to 10 cents per annum for each hectare of the area of the mine, which in the case of the company's mine Inciarte, a mine of 300 hectares, amounted to a gross annual tax of $30. It would seem, therefore, that upon the payment of this nominal tax of $30 per annum the company was exempt from further payments of any kind to the Venezuelan Government. Such was the understanding of the company; such should have been the understanding of the Venezuelan Government, because it drew up the concession and is supposed to know the import of the terms used. It is proper to mention in passing that the claimant contends, and always has contended, that he would not have bought the concession and expended money upon the faith of it had the exemption from future increased taxation not been expressly stated in the concession.

Notwithstanding this solemn exemption, the Venezuelan Government has proceeded to impose additional taxes upon the company by extending to it the provisions of laws subsequently enacted. On January 23, 1904, a new mining code of Venezuela was passed, whereby the company's taxes were increased in the following ways: First, the hectare tax of 10 cents a hectare was increased fourfold, thus imposing a new tax of $120 per annum instead of the tax of $30, the tax specified in the concession; second, a tax of 3 per cent on the gross product of the mine was imposed, which, under the valuation of $20 a ton fixed for refining asphalt, amounted to a tax of 60 cents per ton on the products of the mine; third, by executive decree relating to mines, issued January 21, 1904, further taxes were imposed as follows: Four bolivars, or 80 cents, per ton, as export dues on each ton of asphalt exported; fourth, a minimum tax of 25 per cent of the net products of the exploitation of the mine.

Shortly after the passage of this new code the Venezuelan Government proceeded to enforce these various provisions, except the tax of 25 per cent upon the net product of the mine; and, moreover, in further violation of the terms of the concession the Government proceeded to impose the regular import taxes of the country on certain

bags and other articles imported by the company for use in connection with its mine and railroad in packing and shipping asphalt.

The net result of the various taxes imposed is $120 a year hectare tax, and $1.40 tax per ton on each ton of refined asphalt exported, and the regular import taxes of the country upon all goods imported in connection with the operation of the concessions.

The company has contested and does contest the right of the Venezuelan Government to tax them, and a reference to the language of Article XII of the concession justifies, in the opinion of this Government, the contention of the claimant.

It is suggested that the company should seek redress for its grievances, if any it has, in the courts of Venezuela, and attention is called to the Calvo clause, which is supposed to preclude diplomatic intervention; but this Government fails to understand how a country can take advantage of a clause in a contract when it denies the existence of the very contract in which the clause is supposed to be found, nor can this Government concede the right of its citizens to waive or contract away the right of the United States to intervent diplomatically in a proper case.

The invitation to litigate its rights in a court of justice when the rights are stated and safeguarded in the concession as strongly as language can safeguard or state any right or privilege is an invitation to delay operations, to waste the company's resources in the costs of litigation without any guaranty that the decision of the court when rendered will be accepted as binding upon the Executive, should it fail to support the contention of the Executive. Reference has been made in the case of the Orinoco Corporation, in which it will be remembered that an international tribunal and the law courts of Venezuela denied the power of the Executive to annul a contract ratified by the Venezuelan Congress, and yet, notwithstanding the existence of this international and national decree, the Federal Executive has repeatedly granted away property of the Orinoco Corporation under its concession as if the judgments of the international and national courts denying the right of the Executive were nonexistent. Under these circumstances this Government can not advise its citizens to litigate a question when it appears that the judgments rendered in cases in which its citizens were claimants had been repeatedly and systematically disregarded.

The United States, therefore, must insist either that the Venezuelan Government withdraw its opposition to the right of the claimant to perform his contract in accordance with the terms of the concession, or that the question be submitted to an impartial and competent tribunal in which the rights of the company may be adjudicated and damages assessed.

The several cases in regard to which the Government of the United States now finds itself constrained to seek due remedy and redress being thus set forth in all needful detail, you are instructed to bring these several causes of complaint to the immediate and serious attention of the Venezuelan Government and to insist that the Government to which you are accredited shall give to each and every demand herein set forth immediate consideration.

You will deliver a copy of this instruction to the Venezuelan minister for foreign affairs.

I am, etc., ELIHU ROOT.

Mr. Russell to Mr. Root.

No. 186.] AMERICAN LEGATION,
Caracas, April 7, 1907.

SIR: I have the honor to inform you that I have presented to the Venezuelan Government the five cases in which American citizens claim redress, in accordance with your instructions of February 28. Your instructions were sent here a week before my departure from Washington, and were held pending my arrival. I inclose you herewith a copy of my note to the foreign office in presenting these cases, and a copy and translation of the answer from the minister for foreign affairs.

I have had several interviews with Doctor Paul since I sent my note, and he assures me that he intends to study very carefully all the cases as they are now presented in your instructions to me, a copy of which was inclosed with my note, and that there will be no undue delay in his answer.

I am, etc., WILLIAM W. RUSSELL.

[Inclosure No. 1.]

Mr. Russell to Doctor Paul.

AMERICAN LEGATION,
Caracas, March 30, 1907.

SIR: In accordance with instructions from my Government I am directed to bring to the attention of the Venezuelan Government the five pending cases in which American citizens claim redress, and to ask for the serious and immediate consideration of these cases as presented in the inclosed copy of instructions to me.

My Government has devoted a considerable length of time to a very serious and careful reexamination of all these cases, and in the new and fuller light in which they are now again presented your excellency can not fail to take that favorable action in each case that is expected by my Government.

I take, etc., W. W. RUSSELL.

[Inclosure No. 3—Translation.]

Doctor Paul to Mr. Russell.

UNITED STATES OF VENEZUELA,
MINISTRY OF FOREIGN AFFAIRS,
Caracas. April 6. 1907.

SIR: I have received your excellency's note of the 30th of last month, in which you inform me that your Government has instructed you to call the attention of the Government of Venezuela to five special cases in which American citizens claim redress, and to ask from this Government an immediate consideration of said cases as presented in a communication to your excellency from his excellency Elihu Root, Secretary of State, dated the 28th of last February, and a copy of which, consisting of 50 pages of typewritten English, accompanied your excellency's note.

Your excellency observes that your Government has devoted considerable time to a very serious and careful reexamination of all these cases, and that in the new and fuller light in which they are now again presented I can not fail to take the favorable action in each case that your Government expects.

From a cursory examination I have made at first view of the five cases referred to in your excellency's note, and in that of his excellency the Secretary of State, I have noted that for the first time are presented for the study and consideration of my Government the arguments in the two claims called "Orinoco Corporation" and "Crichfield," and there is no former communication concerning them on record in this ministry.

In regard to the other three cases—"Jaurett," "Orinoco Steamship Company," and "New York and Bermudez Company"—which your excellency mentions as having been reexamined by the Government of the United States, devoting for this

purpose considerable time in order to present them, as it is now done, in a new and fuller light, I must call your excellency's attention to a fact very worthy to be taken into consideration, viz, that from the end of 1904 until March, 1905, these same three claims were actively pressed by your excellency's predecessor, Mr. Herbert W. Bowen, the Government of Venezuela contending that the decisions in said cases were in conformity to principles that safeguarded the sovereignty and independence of the courts of justice of the Republic, to the exercise of its rights as a nation, and to the strict observance of international obligations of mixed commissions whose decisions it was agreed should be definite and inappealable.

This diplomatic discussion ended March 23, 1905, when answer was made from this ministry to the note of the 19th of the same month and year from your excellency's predecessor, Mr. Herbert W. Bowen, who presented with his note a copy of instructions from His Excellency Mr. John Hay, then Secretary of State of your excellency's Government.

Since the above-mentioned date, March 23, 1905, my Government had received no declaration on the part of that of your excellency to indicate its purpose to insist on said claims as included in the inclosure with your excellency's note, and for that reason it was considered that diplomatic discussion in regard to them was fundamentally closed.

Since the Government of the United States has presented these claims again, and as your excellency states in a new and fuller light, my Government proposes to consider carefully the new phase of the aforesaid three cases, and the grounds on which the Government of your excellency relies to introduce the other two cases—that of the Orinoco corporation and that of Crichfield.

As soon as this ministry can acquaint itself fully with all the antecedents in the cases and with all the voluminous mass of documents which it must examine I will hasten to transmit a reply to your excellency.

I avail, etc., J. DE J. PAUL.

The Acting Secretary of State to Minister Russell.

DEPARTMENT OF STATE,
Washington, April 11, 1907.

SIR: I inclose for your information copy of a letter from Mr. R. Floyd Clarke, forwarding a translation of the asphalt concession granted by the Venezuelan Government to Antonio Aranguren on February 28, 1907, apparently made on the theory that the concession belonging to the United States and Venezuela Company had lapsed.

You may make such use of this letter as you may find desirable in connection with the recent instruction of the Department relating to the case of the United States and Venezuela Company and other cases against Venezuela.

I am, etc., ROBERT BACON.

The United States and Venezuela Company to the Secretary of State.

NEW YORK, *March 29, 1907.*

DEAR SIR: As mentioned in a recent letter to the Hon. James B. Scott, Solicitor of the Department, on the 20th day of February, 1907, I forwarded from New York, by registered mail, the communication from the United States and Venezuela Company to President Cipriano Castro, of Venezuela, dated February 4, 1907, of which a copy of the English original and a copy of the translation of the same inclosed in said letter to President Castro have hitherto been forwarded to you.

This letter, in the ordinary course of events, must have reached the Venezuelan Government about February 27 or 28.

Mr. Russell to Mr. Root.

No. 186.] AMERICAN LEGATION,
Caracas, April 7, 1907.

SIR: I have the honor to inform you that I have presented to the Venezuelan Government the five cases in which American citizens claim redress, in accordance with your instructions of February 28. Your instructions were sent here a week before my departure from Washington, and were held pending my arrival. I inclose you herewith a copy of my note to the foreign office in presenting these cases, and a copy and translation of the answer from the minister for foreign affairs.

I have had several interviews with Doctor Paul since I sent my note, and he assures me that he intends to study very carefully all the cases as they are now presented in your instructions to me, a copy of which was inclosed with my note, and that there will be no undue delay in his answer.

I am, etc., WILLIAM W. RUSSELL.

[Inclosure No. 1.]

Mr. Russell to Doctor Paul.

AMERICAN LEGATION,
Caracas, March 30, 1907.

SIR: In accordance with instructions from my Government I am directed to bring to the attention of the Venezuelan Government the five pending cases in which American citizens claim redress, and to ask for the serious and immediate consideration of these cases as presented in the inclosed copy of instructions to me.

My Government has devoted a considerable length of time to a very serious and careful reexamination of all these cases, and in the new and fuller light in which they are now again presented your excellency can not fail to take that favorable action in each case that is expected by my Government.

I take, etc., W. W. RUSSELL.

[Inclosure No. 3—Translation.]

Doctor Paul to Mr. Russell.

UNITED STATES OF VENEZUELA,
MINISTRY OF FOREIGN AFFAIRS,
Caracas, April 6, 1907.

SIR: I have received your excellency's note of the 30th of last month, in which you inform me that your Government has instructed you to call the attention of the Government of Venezuela to five special cases in which American citizens claim redress, and to ask from this Government an immediate consideration of said cases as presented in a communication to your excellency from his excellency Elihu Root, Secretary of State, dated the 28th of last February, and a copy of which, consisting of 50 pages of typewritten English, accompanied your excellency's note.

Your excellency observes that your Government has devoted considerable time to a very serious and careful reexamination of all these cases, and that in the new and fuller light in which they are now again presented I can not fail to take the favorable action in each case that your Government expects.

From a cursory examination I have made at first view of the five cases referred to in your excellency's note, and in that of his excellency the Secretary of State, I have noted that for the first time are presented for the study and consideration of my Government the arguments in the two claims called "Orinoco Corporation" and "Crichfield," and there is no former communication concerning them on record in this ministry.

In regard to the other three cases—"Jaurett," "Orinoco Steamship Company," and "New York and Bermudez Company"—which your excellency mentions as having been reexamined by the Government of the United States, devoting for this

purpose considerable time in order to present them, as it is now done, in a new and fuller light, I must call your excellency's attention to a fact very worthy to be taken into consideration, viz, that from the end of 1904 until March, 1905, these same three claims were actively pressed by your excellency's predecessor, Mr. Herbert W. Bowen, the Government of Venezuela contending that the decisions in said cases were in conformity to principles that safeguarded the sovereignty and independence of the courts of justice of the Republic, to the exercise of its rights as a nation, and to the strict observance of international obligations of mixed commissions whose decisions it was agreed should be definite and inappealable.

This diplomatic discussion ended March 23, 1905, when answer was made from this ministry to the note of the 19th of the same month and year from your excellency's predecessor, Mr. Herbert W. Bowen, who presented with his note a copy of instructions from His Excellency Mr. John Hay, then Secretary of State of your excellency's Government.

Since the above-mentioned date, March 23, 1905, my Government had received no declaration on the part of that of your excellency to indicate its purpose to insist on said claims as included in the inclosure with your excellency's note, and for that reason it was considered that diplomatic discussion in regard to them was fundamentally closed.

Since the Government of the United States has presented these claims again, and as your excellency states in a new and fuller light, my Government proposes to consider carefully the new phase of the aforesaid three cases, and the grounds on which the Government of your excellency relies to introduce the other two cases—that of the Orinoco corporation and that of Crichfield.

As soon as this ministry can acquaint itself fully with all the antecedents in the cases and with all the voluminous mass of documents which it must examine I will hasten to transmit a reply to your excellency.

I avail, etc., J. DE J. PAUL.

The Acting Secretary of State to Minister Russell.

DEPARTMENT OF STATE,
Washington, April 11, 1907.

SIR: I inclose for your information copy of a letter from Mr. R. Floyd Clarke, forwarding a translation of the asphalt concession granted by the Venezuelan Government to Antonio Aranguren on February 28, 1907, apparently made on the theory that the concession belonging to the United States and Venezuela Company had lapsed.

You may make such use of this letter as you may find desirable in connection with the recent instruction of the Department relating to the case of the United States and Venezuela Company and other cases against Venezuela.

I am, etc., ROBERT BACON.

The United States and Venezuela Company to the Secretary of State.

NEW YORK, *March 29, 1907.*

DEAR SIR: As mentioned in a recent letter to the Hon. James B. Scott, Solicitor of the Department, on the 20th day of February, 1907, I forwarded from New York, by registered mail, the communication from the United States and Venezuela Company to President Cipriano Castro, of Venezuela, dated February 4, 1907, of which a copy of the English original and a copy of the translation of the same inclosed in said letter to President Castro have hitherto been forwarded to you.

This letter, in the ordinary course of events, must have reached the Venezuelan Government about February 27 or 28.

Under date of March 14 our attorney in fact in Venezuela, Mr. David Fleming, writes us inclosing a copy of a new concession, bearing date the 28th day of February, 1907, granted by the United States of Venezuela to Antonio Aranguren, a Venezuelan, and incloses in his letter a copy of the Official Gazette of the State of Zulia, bearing date March 9, 1907, which contains a copy of said concession to said Aranguren in the original Spanish.

I inclose to you herewith a translation of said concession and call your attention to the following facts:

1. Here is a concession granting to Antonio Aranguren, a Venezuelan, "the mines of asphalt existing in the districts of Maracaibo and Bolivar, of the State of Zulia, remaining excepted from this concession those that belong to other persons, but in case they are declared lapsed by the Government they will remain from that time incorporated in the present contract."

He is given four years to commence the working of the mines, when, if he has not begun to do so, he may pay 2,500 bolivars, or $500, and have the right extended for four more years.

He is to pay to the National Government a surface tax of 2 bolivars annually for each hectare of mine he puts in operation, and he is to pay the National Government 4 bolivars for each ton of the product.

In consideration of this the Government exonerates him from import duties and other taxes.

During the time that the contract exists the Government agrees not to make any other concession to any other person for the working of deposits of asphalt in the districts of Maracaibo and Bolivar, of the State of Zulia.

By article 10 it is declared that, "in conformity with article 128 of the said decree this contract is considered as a special mining title, and consequently will not have to be submitted to the consideration of the National Congress."

We call your attention to this contract for the purpose of impressing upon you—

First. That it appears to be granted at this special time for the express purpose of allowing the grantee to take possession, or attempt to take possession, of the mine Inciarte, of this company, in the district of Maracaibo, under some claim that our concession is lapsed.

You will note that while the contract is dated February 28, 1907, it is not published in the Gazette until March 9, and that the date of its grant appears to coincide pretty closely with the time that they received our notice that we rescinded the contract and demanded damages and offered to give up the property, at the same time notifying them that we would no longer be responsible for its repair or up-keep.

It seems evident that the Government has some intention not to accept our offer and take possession as a government, which would bind them to a rescission later if we are entitled to a rescission, but that they are appointing this financially irresponsible grantee of a new concession for the purpose of having him take some action under this grant which the Government, if unsuccessful in its dispute with us, can repudiate, or if successful in its dispute with us, can take advantage of.

You will also note that the concession now made to this irresponsible adventurer is not of one single mine or deposit in the districts

of Maracaibo and Bolivar, but is of all the mines of asphalt in those districts, and that the taxes asked from him are less than the taxes which we have already offered to the Venezuelan Government to submit to if they will affirm our existing concession as to one single mine in the district of Maracaibo. Thus we have offered to pay 5 bolivars per ton for each ton exported, while he is only obligated to pay 4 bolivars per ton (the hectare tax of 2 bolivars is merely nominal).

You will note, also, that he makes no guaranty to exploit any mines or build any railroads or put up any money whatsoever of any kind, while we were required to pay under our concession 50,000 bolivars in cash as a guaranty of the starting and completion of the work on the railroad. (See art. 17 of our concession, p. 47 of original petition of the United States and Venezuela Company against the United States of Venezuela, filed in the office of the Secretary of State.)

We were also compelled to build our railroad within one year from date of beginning, and were compelled to begin within six months from the date of the concession.

You will recollect that when Mr. Calhoun was sent as the special agent of this Government to Venezuela that the objection taken before him as to our concession was that the Government had not been sufficiently protected in allowing us for fifty years to pay no taxes except the small hectare tax of 10 cents per hectare, and that the Venezuelan Government objected to the character of our contract for that reason, as being unduly favorable to the concessionaire, and one that their Congress would not for that reason approve.

You will observe how well this same President Castro protects the interests of Venezuela in this second concession now made to Antonio Aranguren, for here he grants not one mine, but all mines and all deposits to this party for considerations less valuable to the Government, on the face of them, than the considerations we offered to submit ourselves to simply for the affirmance of our contract and for being permitted to go on with the work of one mine, in the development of which we had spent over $600,000 on the faith of that contract.

We also desire to call your attention to the fact that, while the contract of April 20, 1901, between the United States of Venezuela and George W. Crichfield, of which the United States and Venezuela Company is now the assignee, received the general approval of Congress by the general resolution passed approving all the acts of Gen. Cipriano Castro as military dictator or provisional president of that Government, which approval is now denied by General Castro, and repudiated as being ineffective to constitute a contract with the Executive—by the express terms of this concession to Aranguren no approval of Congress whatever is necessary. Hence we have here an absolute grant of a similar concession by President Castro without any approval of Congress and expressly stating that such approval is not necessary, yet the concession so made by the Executive alone is similar to the one he hitherto made to us and which, although approved by Congress, he now repudiates.

In conclusion, the United States and Venezuela Company respectfully requests the following action in the premises as necessary to preserve their interests, if consistent with the views and policy of your office, namely:

1. That the American minister at Caracas be instructed to bring the matter of this asphalt concession to Antonio Aranguren to the attention of the Venezuelan Government and in that connection state that this Government hopes that the grant made by the Venezuelan Government to Antonio Aranguren is not to be taken advantage of in any way, either by the Venezuelan Government or by the concessionaire, in such manner or way as to bring about any conflict of title between its concessionaire, Antonio Aranguren, and the United States and Venezuelan Company as to the title of the United States and Venezuela Company to the mine Inciarte and the railroad and plant connected therewith, stating that this matter is brought to the attention of the Venezuelan Government by reason of the fact that the Government of the United States does not desire that in future any question shall be brought up in the matter of the claim of the United States and Venezuela Company against the United States of Venezuela by any possibility of concessionaires under the United States of Venezuela claiming title to the mines or property of the United States and Venezuela Company so as to produce a complication in the title similar to the one which has already happened in the matter of the title of the Bermudez Company to its title to asphalt mines in Bermudez, asising out of subsequent grants made to Warner Quinlan & Co.

Hoping that the above request will receive your favorable consideration,

We remain, etc.,

UNITED STATES AND VENEZUELA COMPANY,
Per [Signature illegible],
Secretary.

[Inclosure.—Translation.]

Asphalt concession to Antonio Arangurem, February 28, 1907.

The minister of fomento of the United States of Venezuela, sufficiently authorized by the Federal Executive, for one party, and for the other Antonio Aranguren, Venezuelan, of age and a resident of this capital, have celebrated the following contract:

ARTICLE I.

The Federal Executive, according to the disposition of article 128 of the regulating decree of the law of mines, concedes the renting for the period of fifty years, counting from to-day, to Antonio Aranguren, his successors, concessionaires or assigns that in future will be called the renter, the mines of asphalt existing in the districts of Maracaibo and Bolivar of the State of Zulia, remaining excepted from this concession those that belong to other persons, but in case they are declared lapsed by the Government, they will remain from that time incorporated in the present contract.

ARTICLE II.

The renter binds himself:

(*a*) To commence working the mines, acquired by the present contract, within the period of four years, according to what is prescribed in article 57 of the said decree, and this period will be counted from this date.

(*b*) To pay to the National Government a fine of 2,500 bolivars if, in the period fixed he shall not have commenced work, and in that case he will have a right to a prorogue of four more years, according to that prescribed in article 58 of the same decree.

(*c*) To pay to the National Government a surface tax of 2 bolivars annually for each hectare the mines measure that he puts in operation, as per the plans he has to present to the minister of fomento, within three months of the commencement of work on

each deposit; these plans will have to be adjusted to the dispositions of the law of mines and to the decree that governs it in every respect.

(*d*) To pay to the National Government, in the proper office, 4 bolivars for each ton of the products of the work.

ARTICLE III.

The renter will be responsible in the first period for the payment of the contributions to which he is obliged by the foregoing article, with the edifices, machines, apparatus, and other adjuncts and annexes of his company, and in case of insolvency for the period of one year, the present contract will be considered rescinded.

ARTICLE IV.

The National Government is obliged on its part:

(*a*) Not to burden the renter with any other contribution or taxes that may not be established in article second of this contract.

(*b*) To exonerate import duties for one time only on machines, tools, apparatus, and utensils destined for the company, and for all time of the contract the knocked-down envelopes that it needs for the exportaion of its products, the renter having to comply with the formalities of law in all cases.

ARTICLE V.

The National Government promises the renter the facilities that may be compatible with the fiscal laws of the Republic for the dispatch of the ships destined for the export of the products of the company.

ARTICLE VI.

The renter can not transfer the present contract to any other person or company, national or foreign, without the previous permission of the Federal Executive, and in no case to a foreign government.

ARTICLE VII.

They will always be considered as Venezuelans the company or companies that may be formed for the working of what is the object of the present contract. Said company or companies will be subjected to the laws and jurisdiction of the tribunals of Venezuela in everything referring to the working of the mines here contracted; they must have their legal residence in the country and maintain a representative in it, even if they have them abroad; having, moreover, to constitute themselves in Venezuela in accordance with its laws, all this conforming to that stipulated in articles 6 and 7 of the law of mines and in article 132 of the decree regulating it.

ARTICLE VIII.

During the time of the present contract the National Government will not make any concession to any other person or company for the working of deposits of asphalt in the districts of Maracaibo and Bolivar of the State of Zulia.

ARTICLE IX.

In all that which may not be expressly stipulated in the present contract the dispositions of the law of mines and the regulating decree before mentioned will govern.

ARTICLE X.

In conformity with article 128 of the said decree this contract is considered as a special mining title, and consequently will not have to be submitted to the consideration of the National Congress.

ARTICLE XI.

In all the stipulations established in the present contract the rights of third parties remain safe.

ARTICLE XII.

The doubts and controversies of whatever nature that can come up in the interpretation and execution of this contract and that can not be amicably settled by the contracting parties will be decided by the competent tribunals of Venezuela according

to its laws, without that any motive or any cause can give origin to international reclamations.

Two copies are made of one same tenor and one effect only, in Caracas, on the 28th day of February, 1907, ninety-sixth year of independence and forty-ninth of federation.

J. M. HERRERA IRIGOYEN.

ANTONIO ARANGUREN.

United States of Venezuela, ministry of fomento, direction of territorial wealth, agriculture and live stock, Caracas, 28th of February, 1907. 96th and 49th.

Published by order of the citizen minister.

The director.

J. M. ESPINDOLA.

Mr. Russell to Mr. Root.

No. 188.] CARACAS, *April 28, 1907.*

SIR: Referring to your unnumbered instructions of February 28, 1907 (no file number to refer to), in regard to the five pending cases in which American citizens are claiming redress from the Government of Venezuela, I have the honor to inclose herewith a translation of the note of the foreign minister in answer to my communication transmitting a copy of your instructions to me. A copy and translation of the memorandum of the President is also inclosed.

In this connection I have to inform you that the foreign minister has stated to me that the Venezuelan Government is still disposed to endeavor to come to some amicable arrangement in regard to the Critchfield case, and will consider a proposition from the United States and Venezuela Company for a new contract. I respectfully request instructions as to whether I am now authorized to submit for the consideration of this Government the proposed contract drawn up by Mr. R. Floyd Clarke, attorney for the United States and Venezuela Company, which contract was handed to me by the Solicitor for the Department of State last winter, and is indorsed on the back as follows:

Index Bureau, Department of State. January 31, 1907. 1948/3

In submitting the proposal for a new contract I understand it is without prejudice to the interests of the company as outlined in your letter of instructions to me.

I am, etc., WILLIAM W. RUSSELL.

Doctor Paul to Mr. Russell.

[Translation.]

No. 385.] MINISTRY OF FOREIGN AFFAIRS OF THE UNITED STATES OF VENEZUELA,
Caracas, April 23, 1907.

SIR: In answer to your excellency's note of the 30th of last month, and to the memorandum which accompanied it, I am instructed by the constitutional President of the Republic to send to your excellency the inclosed memorandum, which your excellency will please forward to your Government.

I avail, etc. J. DE J. PAUL.

[Translation.]

MEMORANDUM.

It is the rule of the Government of Venezuela, in matters which it is obliged to treat with the governments of other countries, to confine its statements only to principal points thus facilitating clearness and concision.

In the memorandum presented by His Excellency Mr. W. W. Russell, which accompanied his note of March 30 last, there will be found five points, or, rather, five cases, which cover the questions presented in the aforesaid memorandum. They are as follows:

No. 1. Claim of Mr. Jaurett.

No. 2. Claim of the Manoa Company (Limited), Orinoco Company (Limited), and Orinoco Corporation.

No. 3. Claim of the Orinoco Steamship Company.

No. 4. Claim of the New York and Bermudez Company.

No. 5. Crichfield claim.

In regard to the first point, the Government of Venezuela observes that the explanations requested by the Government of the United States were duly given and in quite and explicit note, but now it can be added that it was a matter of publicity and notoriety the pernicious and malevolent conduct of the foreigner Jaurett against the country which had afforded him hospitality and against the Government which had even shown him favors.

It is universally known that Jaurett, during the last revolution which devastated Venezuela, was sending by cable directly, or through Curaçao or Trinidad and in any way in which he was able, entirely false and alarming news for the purpose of producing a sensation in the press of the United States, all of which may be reviewed to prove the truth of this assertion. The Government of the United States found the expulsion of Mr. Jaurett so right and just, in view of his bad conduct, that at that time it closed the affair without Mr. Jaurett taking any personal action against the Government of Venezuela, endeavoring only from the very first to influence diplomatic action against the Republic.

In regard to the second, third, and fourth points the Government of the United States knows very well that the questions which they involve are questions which have already been adjudicated ("*Cosa juzgada*"), and that the revision proposed in the memorandum of the verdicts of the Venezuelan-American Mixed Commission, in two of those questions, even though said verdicts were definitely favorable to Venezuela by reason of the right which she had on her side, there would be no reason then why all the rest of the verdicts of the mixed commissions *against* Venezuela should not be revised; verdicts claimed by her in several cases to be contrary to law

The Manoa Company (Limited), according to a declaration of the Venezuelan-American Mixed Commission, should have recognized, in the matter of the resolution of its contract with the Government of Venezuela, the sentence which the tribunals of the Republic should render in that matter, and if there was any negotiation to be carried on in that suit, it should have been done by the representative or lawyer of said company before the usual and competent tribunals having cognizance of the affair.

The claims of the Orinoco Steamship Company and the New York and Bermudez Company are matters which have been adjudicated and closed in legal form, and in accordance with the procedure required in each case.

In regard to the fifth point referred to in the memorandum the Government of the United States ought to know also that the Crichfield contract was not approved by Congress, which approval at that time was an indispensable constitutional requisite for the validity of said contract. The Government of Venezuela, accuated only by a desire to come to a friendly understanding with Mr. Crichfield, drew up a new contract, satisfactory to both parties, as His Excellency Mr. Russell well knows, which said new contract was the result of a private conference with the representative of Crichfield, and the Government of Venezuela has not been able to understand why Mr. Crichfield did not take up the matter again instead of leaving it in the state that it is now in.

The Secretary of State to Minister Russell.

No. 87.] DEPARTMENT OF STATE,
Washington, May 10, 1907.

SIR: The Department is advised by counsel for the United States and Venezuela Company that on February 20 last there was transmitted to President Castro by mail a document containing certain

resolutions adopted by the board of directors relating to the company's controversy with Venezuela. The Department is also advised that the company has had no acknowledgment from the Venezuelan authorities, and it is requested that the Department ascertain whether or not the papers referred to have been received by the Venezuelan authorities.

You may accordingly obtain this information and inform the Department, so that the company's anxiety may be relieved.

I am, etc.

E. ROOT.

Attorney for the United States and Venezuela Company to the Secretary of State.

NEW YORK, *April 20, 1907.*

DEAR SIR: I have the pleasure to acknowledge the receipt of your kind favor of the 11th instant and to thank you for your action taken as therein stated in regard to the recent concession granted by the United States of Venezuela to Antonio Aranguren.

Referring to my favor to you of the 23d ultimo in this same matter, in which I inclosed duplicates, signed by the United States and Venezuelan Company, of the notice hitherto sent by it to President Castro by registered mail from New York, and on which no receipt has yet been received, and in which for that reason I requested you to forward the same to the United States minister at Caracas for delivery by him to the Venezuelan Government in order that the diplomatic record of this transaction should contain the proof of the offer of rescission we have made to the Venezuelan Government and our demand upon them for damages in the matter—proof which will be necessary to sustain our claim in any future arbitration, and proof very important to us on account of the fact that we are now notifying that Government that we refuse any longer to keep the property in repair and that it is now at their risk as to future deterioration, I would respectfully request to know what action, if any, has been taken with reference to this request, and hope that our petition in the matter will receive your due consideration.

Thanking you for your courtesy in the premises,

I am, etc.,

R. FLOYD CLARKE.

Attorney for the United States and Venezuela Company to the Secretary of State.

MARCH 23, 1907.

DEAR SIR: In the matter of the claim of the United States and Venezuela Company against the United States of Venezuela, the United States and Venezuela Company, on the 20th day of February, 1907, caused to be sent, by registered mail from New York, to the Hon. Cipriano Castro, President of Venezuela, a notice of election to rescind the contract, bearing date the 4th day of February, 1907, and tendering back the property and demanding damages, of which the inclosed is a duplicate original, together with a translation of the same into English, of which the inclosed is a duplicate.

As yet we have received no answering receipt through the post-office of the receipt by the Venezuelan Government of these important documents.

Under the circumstances, I forward to you two duplicates of the original letter, with two translations of the same into Spanish, requesting you to forward said duplicates and Spanish translations to the American minister in Venezuela, and to request him to deliver one of each of said duplicates to the Venezuelan Government, along with the inclosed letter from the United States and Venezuela Company, bearing date the 22d day of March, 1907, to the Hon. Cipriano Castro, explaining the sending of this notice in this manner, and that you then request the honorable minister to kindly put us in possession of proof, by affidavit or otherwise, attached to the second duplicate of each of said documents, that these documents have been actually delivered to the Government of Venezuela.

You will note that the documents now sent, with the exception of the duplicate letter of March 22, 1907, are the same as those of which copies were sent to the Hon. James B. Scott, Solicitor, United States State Department, in my letter of February 19, 1907.

By so doing you will very greatly oblige, etc.,

R. FLOYD CLARKE.

Minister Russell to the Secretary of State.

No. 201.] AMERICAN LEGATION,
Caracas, May 26, 1907.

SIR: In connection with the pending case of the Orinoco Corporation against the Government of Venezuela, I have the honor to inclose herewith a translation of a verdict of the federal and cassation court in the suit brought by the Venezuelan Government against the Manoa Company (Limited) and the Orinoco Company (Limited) for a rescission of the Fitzgerald concession.

I am, etc.,

WILLIAM W. RUSSELL.

[Gaceta Oficial No. 10083. May 22, 1907.]

FEDERAL COURT AND OF CASSATION.

The United States of Venezuela. In their name. The federal court and of cassation, in federal hall.

Heard with the written brief of the attorney of the defendant companies. In the suit brought by the nation against the Manoa and Orinoco Company (Limited), demanding that they shall agree to the resolution of the Fitzgerald contract, the trial judge under date of April 1 last admitted the proofs submitted by the attorney of the defendant companies, fixed the extra transit time for substantiating the evidence which is to be taken in New York, El Paso, State of Texas, United States of America, Greenwood, British Columbia, Faribault, State of Minnesota, and Worcester, State of Massachusetts, of the United States of America, and England, and disposed that the actor should determine one by one the documents referred to in chapter 2 of the statement of evidence, this not having been done in the aforesaid statement.

Founding himself upon the reasons stated in the motion made on the 3d day of this same month the attorney of the aforesaid companies asked for the revocation by contrary imperium, of the said determination, and the trial judge, as per record of same date, maintained same in all its parts. Against this decision the attorney of the defendant companies interposed an appeal, and it is by virtue thereof that the record

has been submitted to this court, which after having made a study of the acts, enters upon sentence and observes:

First. That the extraordinary transit term fixed by the trial judge, for the substantiation of the evidence submitted by the attorney of defendant companies is in accord with the spirit of the dispositions contained in articles 293 and 26 of the Code of Civil Procedure and of the jurisprudence established in analogous cases by this same court.

Second. That the parties must determine with precision the proofs which they wish to make valid in the suit, for without this, judicial debate would be made impossible.

Third. That the documents to which the attorney of the defendant companies refers in chapter 2 of his statement of proofs are not determined, because the petitioner does not express the dates thereof, nor the subject-matter which they contain, nor does the designation of the bureaus in which it is said they are to be found contribute to their determination.

For these reasons, administering justice by authority of the law, the appealed action is confirmed in all its parts. Given, signed, and sealed in the federal court and of cassation, in the federal capitol, in the hall of audiences in Caracas, on the 15th day of the month of May, 1907. Ninety-sixth of the independence, forty-ninth of the federation.

The vice-president, PEDRO M. BRITO GONZALES.

The relator, E. ENRIQUE TEJERA.

The chancellor, J. ABDÓN VIVAS.

Judges and associate judges: ALEJANDRO URBANEJA, P. HERMOSO TELLERIA, EMILIO H. VELUTINI.

The secretary, M. IZAGUIRRE VALERI.

A true copy. M. IZAGUIRRE VALERI.

Minister Russell to the Secretary of State.

AMERICAN LEGATION,
Caracas, June 12, 1907.

SIR: Referring to your No. 87 of May 10 (File No. 1948/12), in regard to a letter sent to President Castro by the United States and Venezuela Company in February last, I have the honor to state that the secretary-general to the President reports to the minister for foreign affairs that the letter in question can not be found.

I am, etc.,

WILLIAM W. RUSSELL.

Mr. Root to Mr. Russell.

No. 90.] DEPARTMENT OF STATE,
Washington, June 21, 1907.

SIR: I have to acknowledge the receipt of your No. 188 of April 28 last, inclosing a note and a memorandum from the Venezuelan Government in regard to the five pending cases in which American citizens claim redress from the Venezuelan Government.

The Department regrets to find in the position assumed by Venezuela a complete absence of anything responsive to the propositions contained in its instruction to you of February 23 last, looking to an amicable adjustment of these controversies by means of international arbitration. That instruction, prepared only after a most

exhaustive examination into the merits of each of the controversies in question, directed you to bring these cases again to the attention of the Venezuelan Government, and to urge upon that Government the reasons existing in each case for favorable action, and to insist that each and every demand therein set forth should receive consideration.

The answer the Venezuelan Government makes to these demands practically refuses consideration. It is practically confined to a simple denial of the correctness of the attitude of this Government. The curt and contemptuous way in which it ignores or dismisses the serious and respectful representations of the United States produces a painful impression of indifference and disrespect. With the patience, however, which has characterized the actions of the Government of the United States in the past in all its relations to Venezuela, the Department again instructs you to reiterate the views expressed in the instruction of February 23 last and to make the following brief reply to each of the points raised by the memorandum of Venezuela.

THE CLAIM OF A. F. JAURETT.

The answer of the Venezuelan minister of foreign affairs qualifies in general and unfavorable terms the conduct of Mr. Jaurett, but without bringing forward any specific facts which the Department had not already most carefully investigated and considered, with the result that no justification appears to exist in point of law or fact for his expulsion. It should hardly be necessary to say that the mere characterization of Mr. Jaurett's conduct as bad, unsupported by facts specific and sufficient in point of law, does not satisfactorily meet the issues presented.

The Venezuelan Government's attention was called to the unnecessarily harsh manner and method of Mr. Jaurett's expulsion, involving the double grievance of personal humiliation and pecuniary loss. Moreover, attention was called to the fact that the summary and ignominious expulsion of Mr. Jaurett was in contravention of the fundamental law of Venezuela. As to these points no explanation or justification is offered.

The answer finally rests on a mistaken assumption of fact that "the Government of the United States found the expulsion of Mr. Jaurett so right and just, in view of his bad conduct, that at the time it closed the affair." From this assumption the United States Government is constrained to vigorously dissent.

There is an absence of any serious attempt on the part of the minister of foreign affairs to meet the arguments and authorities abundantly adduced in support of this claim. On the other hand, there is an assumption, at once erroneous and gratuitous, that the Government of the United States found the expulsion of Jaurett right and just and had abandoned the case. Both that which is said and that which is omitted in the Venezuelan reply seem clearly to indicate that the Government of Venezuela is without an adequate answer to the merits of the case and to afford additional proof of the justice of the claim.

THE QUESTION OF OPENING AWARDS.

The Government of Venezuela interposes the general objection to a consideration of the cases of the Manoa Corporation and its predecessors and the Orinoco Steamship Company, that these cases were passed upon by the American-Venezuelan Mixed Commission. The Venezuelan memorandum asserts that if these cases are to be examined, there is "no reason then why all the rest of the verdicts of the mixed commissions against Venezuela should not be revised; verdicts claimed by her in several cases to be contrary to law." To answer this objection it is only necessary to refer once more to the well-known fact suggested in the last clause of the Venezuelan answer just quoted, that the Venezuelan Government recognizes that there are certain well-defined grounds for impeaching and setting aside the decisions of arbitral tribunals, and that such action in these specific and exceptional cases in no way conflicts with the general obligation to maintain and perform such awards.

The Venezuelan minister of foreign affairs remarked in his report to the National Congress in 1904, referring to the awards of the mixed commissions of 1903:

> The fact that Venezuela subscribed to the agreements to which I have referred, and that by virtue of said agreements the mixed commissions entered upon an examination of the claims of foreign subjects, did not impose upon the Government the duty of indiscriminately accepting the sentences they might render. * * * The character of a final decision can not always be conceded to arbitral decisions merely because they proceed from the persons appointed to constitute an arbitration commission.
>
> The cause of arbitration would suffer severe injury if the principle should come to be accepted that all arbitral decisions must be carried out, whatever they may be. Publicists have already declared unanimously in favor of the right that governments have to seek the invalidation of certain sentences, and well known are the causes that in their opinion may lead to that recourse.

Accordingly, Venezuela has contested the award of the Belgian-Venezuelan Mixed Commission in the case of the General Company of the Caracas Water Works and the award of the Venezuelan-Mexican Commission in the case of the claim of Messrs. Martinez del Rio Hermanos. Under these circumstances it would not appear that the contention of this Government that certain awards of the American-Venezuelan Commission should be reexamined, for definite and specific reasons, threatens the integrity or finality of the awards of the mixed commissions in general.

THE CASE OF THE ORINOCO CORPORATION ET AL.

This Government can not regard the Venezuelan answer to our proposition to arbitrate the claims of the Orinoco Corporation and its predecessors, the Manoa Company (Limited) and the Orinoco Company (Limited), as satisfactory or sufficient. Many of the claims of the Orinoco Corporation had their origin in 1906, long subsequent to the American-Venezuelan Claims Commission of 1903, and none of them were presented to that or to any other tribunal for adjudication.

The action of the umpire of the American-Venezuelan Claims Commission in dismissing certain claims of the Manoa Company and the Orinoco Company which were presented to the commission can not be accepted as final, since the umpire, in looking to the language of the Fitzgerald contract rather than to the plain text of the protocol for a definition of the authority of the commission to examine

and adjudicate the claims presented to it, decided that the clause of the contract providing that any controversies growing out of the contract should be submitted to the local courts prevented the commission from passing on the merits of the case.

It should be added in passing that in his purely obiter discussion of the status of the Fitzgerald contract the umpire overlooked the fact that some of the claims of the Manoa Company and all of the claims of the Orinoco Company which were presented to the commission arose subsequently to the promulgation of the executive resolution of June 18, 1895, which reinstated the Manoa Company in all of its rights under the Fitzgerald contract, and, therefore, they could not have been invalidated by the failure of the Manoa Company in 1884–85–86 to perform that contract, if such failure there had been, as the umpire supposed.

Such a decision, disregarding alike the terms of the protocol which gave rise to the commission and defined its jurisdiction, and the plain principles of justice and equity which should have guided its judgment even had there been no express provision to that effect, can not be regarded as a final or satisfactory disposition of these claims.

THE ORINOCO STEAMSHIP COMPANY.

That the Government of Venezuela recognizes that the awards of arbitral commissions are not necessarily binding upon the parties, has already been remarked. That the decision in the case of the Orinoco Steamship Company falls within the well-defined limits of the principles which justify a government in refusing to be bound by such a decision, has been pointed out in detail in the instruction of February 23, 1907, to the United States minister, which has been presented to the Government of Venezuela.

It has been shown that the decision of the umpire of the American-Venezuelan Commission of 1903, in this case, rested on such serious errors of law and fact, and manifested such a complete disregard as well of the terms of the protocol as of those principles of justice and equity common not only to international law, but to the law of all civilized States, that the United States could not be expected to regard the decision as a finality. This well-considered and well-supported opinion has not been changed by the simple statement of the Government of Venezuela that the questions involved in this case "have already been adjudicated."

THE NEW YORK AND BERMUDEZ COMPANY.

The Venezuelan note says that the claims of the Orinoco Steamship Company and the New York and Bermudez Company are "matters which have been adjudicated and closed in legal form, and in accordance with the legal procedure required in each case."

Formerly when representations were made to the Venezuelan Government concerning the seizure of the property of the New York and Bermudez Company that Government answered that it could not discuss the allegations made as to the irregular and arbitrary character of the seizure because the case was pending before the courts. But now, after the lapse of nearly three years, the ground is taken that the matter is not one to be discussed because it has been "adjudicated and closed in legal form." As the result of this second posi-

tion the Venezuelan Government in effect declines to enter into any discussion of the subject at all. The proofs submitted by this Government of denial of justice, and its representations that the claimant's property rights have been taken away arbitrarily and in gross violation of Venezuelan law, have been passed over in utter silence.

It is, moreover, necessary to point out that the assertion that the case has been "adjudicated and closed in legal form" involves a strange misconstruction of the legal situation. Except for the decision of the federal and cassation court, rendered on August 7, 1905, declaring the Hamilton concession to be annulled, the company's legal rights, embracing its land and mining titles, stand judicially unassailed, save in so far as they were arbitrarily disregarded and violated in the ex parte order of sequestration under which the company's property was seized. It is also necessary to point out that even the proceeding for the annulment of the Hamilton concession has not been terminated, since no disposition has been made of the report of the appraisers appointed by the federal and cassation court to assess damages against the company in that suit. Although this report was filed on November 24, 1905, it still remains unacted upon.

In its instruction of February 23 last the Department set out the claim of the New York and Bermudez Company in sufficient detail to acquaint the Venezuelan Government with the specific wrongs complained of, for which a remedy was courteously asked. This Government then made earnest protest against the continuance in the case of this perversion of judicial process. In reply thereto no remedial action is promised, or is there even a recognition that the facts stated by this Government call for inquiry. Such a state of affairs constitutes a plain denial of justice and should not be permitted to exist.

CLAIM OF THE UNITED STATES AND VENEZUELA COMPANY.

In regard to the case of the United States and Venezuela Company, ordinarily known as the Crichfield case, the Venezuelan memorandum asserts that the Crichfield concession was not approved by the National Congress. This Government once more calls attention to the general resolution of the Venezuelan Congress, passed on the 25th of February, 1902, approving all the acts executed by the Citizen General Cipriano Castro "during the period in which he has exercised the provisional presidency of the Republic."

Inasmuch as the Crichfield concession was granted by General Castro during his provisional presidency, it would seem to have been approved and validated by the above resolution in case such approval by the legislative department is required by the constitution of Venezuela. This resolution was called to the attention of the Venezuelan Government in the Department's instruction of February 23. The answer of the Venezuelan Government, however, is silent upon this point.

In regard to the statement in the Venezuelan reply that the Government of Venezuela has, through private conference, come to a friendly understanding with Mr. Crichfield, and is not able to understand why Mr. Crichfield does not "take up the matter again instead of leaving it in the state it is now in," this Government is constrained

to reply that it does not understand that any arrangement has been reached which is satisfactory to the United States and Venezuela Company. On the contrary, it understands that having failed to reach a private settlement with the Government of Venezuela that company has notified the Government of Venezuela of its election to regard the action of that Government as amounting to a repudiation of the Crichfield contract, and that the company has therefore elected to rescind the said contract, and to claim from the Government of Venezuela all damages suffered by the company by reason of said repudiation, always providing that such election to rescind will become inoperative if the Government of Venezuela should elect to affirm and to comply with the terms of the original Crichfield concession.

Under these circumstances the Government of the United States is constrained to believe that the Crichfield concession was a valid and subsisting contract, duly ratified and binding upon the Government of Venezuela. That this contract has been improperly violated and repudiated by the Government of Venezuela, and that the United States and Venezuela Company, not having been able to agree upon any terms of settlement with the Government of Venezuela, has elected to regard the acts of that Government as a repudiation of the contract and to rescind the contract and claim damages for such repudiation unless the Government of Venezuela consents to acknowledge the validity of the original Crichfield concession and to comply with its terms.

This Government therefore instructs you to bring this case once more to the attention of the Venezuelan Government and to urge its immediate and careful consideration.

As to each and every one of the aforesaid cases, in case you shall not receive a prompt and favorable reply from the Government of Venezuela, you will expressly and formally propose to the Government of Venezuela that the claims against that government in respect thereof be submitted to arbitration before the permanent court of arbitration at The Hague, or, if Venezuela shall prefer, before a tribunal of three jurists not members of The Hague tribunal, to be selected in the usual manner.

I am, etc., ELIHU ROOT.

Minister Russell to the Secretary of State.

No. 215.] AMERICAN LEGATION,
Caracas, July 20, 1907.

SIR: I have the honor to inform you that the suit of the Venezuelan Government against the New York and Bermudez Company for participation in the Matos revolution has been going on in the court of first instance here for the last ten days. Yesterday the attorney-general rested the case for the Government, and on Monday next the attorney for the Bermudez Company will commence his argument, and it is probable that a verdict will be rendered in the course of ten days or two weeks.

An interesting feature of this case is that the judge before whom the case is being tried was a prominent Matos revolutionist, pardoned afterwards by General Castro.

I have, etc., WILLIAM W. RUSSELL.

Mr. Russell to Mr. Root.

[Telegram.]

WILLEMSTAD, *July 27, 1907.*
(Received 1.55 p. m.)

Venezuelan Government answered to-day my note sent in compliance with your instructions of June 21 and says: "In the first place, the Government of Venezuela reiterates its position as stated in the memorandum which was addressed to you in answer to the one which you sent to this ministry on the 30th of March last, and proceeds now in order to more clearly show the right and justice of its position to make point by point various observations which it deems pertinent." Then follow ten pages of the official statements amplifying justice and right assumed by Venezuela in its position in memorandum forwarded in my No. 188, of April 28. Shall I present formal proposition for arbitration as per instructions in your No. 90, of June 21, or do you wish me to wait until you see note which will leave here August 5?

RUSSELL.

The Acting Secretary of State to Minister Russell.

No. 94.] WASHINGTON, *August 1, 1907.*

SIR: Referring to Department's No. 87, of May 10, and your unnumbered dispatch of June 12 last, in regard to a letter sent by the United States and Venezuela Company to President Castro in February last, which letter the minister for foreign affairs reports can not be found, I inclose for your information copy of a letter from Mr. R. Floyd Clarke to this Department, dated March 23 last (but omit its inclosure), also a copy of Department's letter to Mr. Clarke of July 12 last and of his reply of July 26 last. I also forward in duplicate, with duplicate Spanish translations, the letters in English addressed by the United States and Venezuela Company to President Castro on February 4, 1907, and July 27, 1907.

The Department will be pleased to have you transmit in an informal note to the Venezuelan minister of foreign affairs the originals, English and Spanish, of these letters of February 4 and July 27, explaining that they are transmitted in this way, in view of your dispatch of June 12, above referred to, which states that the documents previously forwarded by the United States and Venezuela Company by registered mail to the Government of Venezuela can not now be found.

It is desired that you shall report your action to this Department, furnishing a copy of your note of transmittal and returning the duplicates, English and Spanish, of the documents transmitted.

Your note should state particularly the various papers transmitted to the Venezuelan foreign office.

I am, etc., ALVEY A. ADEE.

[Inclosure.]

Attorney for United States and Venezuela Company to the Acting Secretary of State.

NEW YORK, *July 26, 1907.*

DEAR SIR: Referring to your esteemed favor of July 12, 1907, and my answer of July 22, 1907, I take pleasure in inclosing to you herewith two originals of letter in

English from the United States and Venezuela Company to General Cipriano Castro, dated July 27, 1907, together with two copies of translation of the same into Spanish.

This letter brings the offer and tender made by the company to the Venezuelan Government under their letter of February 4, 1907, which is now in your hands, down to date.

We would be very much pleased if the State Department would have the kindness to transmit in the Department's mail pouch to Minister Russell the following documents inclosed in my letter to the State Department of March 23, 1907, namely, (1) two duplicates of the original letter of February 4, 1907; (2) two translations of the same from English into Spanish; also (3) two duplicates of the supplemental letter of July 27, 1907; (4) two translations of the same from English into Spanish, contained in this letter, and would request that one each of the duplicate English originals of the letters of February 4, 1907, and July 27, 1907, and one each of said translations of said respective letters from English into Spanish should be delivered to the Venezuelan Government, together with the letter from the United States and Venezuela Company, bearing date the 22d day of March, 1907, inclosed in my letter to the State Department of March 23, 1907, explaining the sending of this notice in this manner.

Kindly also request the honorable minister to put us in possession of some proof, by affidavit or otherwise, attached to the second duplicate of each of these documents, with translations attached, that these documents have been delivered at some date to the Government of Venezuela.

By so doing you will very greatly oblige, etc.,

R. FLOYD CLARKE.

Mr. Russell to Mr. Root.

No. 218.] AMERICAN LEGATION,
Caracas, August 4, 1907.

SIR: In accordance with your instructions No. 90, of June 21, 1907, received here July 7, I have the honor to state that on July 9 I addressed a note to the Venezuelan Government in regard to the five pending cases in which American citizens claim redress, a copy of which is herewith inclosed (inclosure No. 1).

On July 24 I received an answer to my note, a copy of the Spanish text of which is herewith inclosed with translation (inclosures 2 and 3).

Although I considered this answer as unsatisfactory, yet there were some new statements in it that I thought the Department might want to see, and I cabled to you on July 25, before making the formal proposition for arbitration at The Hague.

Touching the Crichfield case, the ministry for foreign affairs makes the statement that in an interview with the President I had agreed to "what was considered a satisfactory agreement." This is a misstatement. I had a conference with the President and the minister of fomento was present. At this conference there was shown me a copy of a proposed new contract which the President had ordered to be forwarded to the United States and Venezuela Company, and which he (the President) said he thought was entirely satisfactory, as he had granted all and even more than the company asked. I cabled this interview on March 6, 1906, requesting information for the President as to the attitude of the Crichfield people in regard to the proposed new contract, and on March 15 the Department replied: "We have been informed by the Crichfield Company that Venezuelan proposition has not been accepted."

The statement as to Mr. Jaurett being private secretary to Mr. Bowen may have arisen from the fact that during the "Lidertadora" revolution Mr. Bowen gave Mr. Jaurett a "safe conduct" as his private secretary for the purpose of obtaining information from the

interior as to the progress of the revolution. With this "safe conduct" Mr. Jaurett accompanied me to Guanta and Barcelona on the U. S. cruiser *Cincinnati*.

I am, etc., WILLIAM W. RUSSELL.

[Inclosure.]

Mr. Russell to Mr. Churion.

LEGATION OF THE UNITED STATES,
Caracas, July 9, 1907.

SIR: Referring to my communication of March 30, 1907, in which, in accordance with instructions, I brought to the attention of the Venezuelan Government the five pending cases in which American citizens claim redress, and asked for a serious and immediate consideration of those cases as presented in a copy of instructions to me, which I inclosed with my note, I have to say that my Government regrets to find in the position assumed by Venezuela, in its memorandum in reply, a complete absence of anything responsive to its proposition looking to an amicable adjustment of these controversies by means of international arbitration.

The answer the Venezuelan Government makes practically refuses consideration and is practically confined to a simple denial of the correctness of the attitude of the Government of the United States.

With that patience, however, which has characterized the actions of my Government in the past in all of its relations to Venezuela, I am again instructed to reiterate the views expressed in the copy of the instructions which accompanied my note of March 30, above referred to, and to make reply as follows to each of the points raised by the memorandum of Venezuela:

THE CLAIM OF A. F. JAURETT.

The answer of the Venezuelan minister of foreign affairs qualifies in general and unfavorable terms the conduct of Mr. Jaurett, but without bringing forward any specific facts which the Department had not already most carefully investigated and considered, with the result that no justification appears to exist in point of law or fact for his expulsion. It should hardly be necessary to say that the mere characterization of Mr. Jaurett's conduct as bad, unsupported by facts specific and sufficient in point of law, does not satisfactorily meet the issues presented.

The Venezuelan Government's attention was called to the unnecessarily harsh manner and method of Mr. Jaurett's expulsion, involving the double grievance of personal humiliation and pecuniary loss. Moreover, attention was called to the fact that the summary and ignominious expulsion of Mr. Jaurett was in contravention of the fundamental law of Venezuela. As to these points no explanation or justification was offered.

The answer finally rests on a mistaken assumption of the fact that "the Government of the United States found the expulsion of Mr. Jaurett so right and just, in view of his bad conduct, that at the time it closed the affair." From this assumption the United States Government is constrained to vigorously dissent.

There is an absence of any serious attempt on the part of the minister of foreign affairs to meet the arguments and authorities abundantly adduced in support of this claim. On the other hand, there is an assumption, at once erroneous and gratuitous, that the Government of the United States found the expulsion of Jaurett right and just and had abandoned the case. Both that which is said and that which is omitted in the Venezuelan reply seem clearly to indicate that the Government of Venezuela is without an adequate answer to the merits of the case and to afford additional proof of the justice of the claim.

THE QUESTION OF OPENING AWARDS.

The Government of Venezuela interposes the general objection to a consideration of the cases of the Manoa Corporation, and its predecessors, and the Orinoco Steamship Company, that these cases were passed upon by the American-Venezuelan mixed commission. The Venezuelan memorandum asserts that if these cases are to be examined, there is "no reason then why all the rest of the verdicts of the mixed commission *against* Venezuela should not be revised; verdicts claimed by her in several cases to be contrary to law." To answer this objection it is only necessary to refer once more to the well-known fact suggested in the last clause of the Venezuelan answer just quoted, that the Venezuelan Government recognizes that there are certain

well-defined grounds for impeaching and setting aside the decisions of arbitral tribunals, and that such action in these specific and exceptional cases in no way conflicts with the general obligation to maintain and perform such awards.

The Venezuelan minister of foreign affairs remarked in his report to the National Congress in 1704, referring to the awards of the mixed commissions of 1903:

"The fact that Venezuela subscribed to the agreements to which I have referred, and that by virtue of said agreements the mixed commissions entered upon an examination of the claims of foreign subjects, did not impose upon the Government the duty of indiscriminately accepting the sentences they might render."

The character of a final decision can not always be conceded to arbitral decisions merely because they proceed from the persons appointed to constitute an arbitration commission.

"The cause of arbitration would suffer severe injury if the principle should come to be accepted that all arbitral decisions must be carried out, whatever they may be. Publicists have already declared unanimously in favor of the rights that governments have to seek the invalidation of certain sentences, and well-known are the causes that, in their opinion, may lead to that recourse * * *."

Accordingly, Venezuela has contested the award of the Belgian-Venezuela mixed commission in the case of the General Company of the Caracas Water Works, and the award of the Venezuelan-Mexican commission in the case of the claim of Messrs. Martinez del Rio Hermanos. Under these circumstances, it would not appear that the contention of the Government of the United States that certain awards of the American-Venezuelan commission should be reexamined for definite and specific reasons threatens the integrity or finality of the awards of the mixed commissions in general.

THE CASE OF THE ORINOCO CORPORATION ET AL.

This Government can not regard the Venezuelan answer to our proposition to arbitrate the claims of the Orinoco Corporation and its predecessors, the Manoa Company (Limited) and the Orinoco Company (Limited), as satisfactory or sufficient. Many of the claims of the Orinoco Corporation had their origin in 1906, long subsequent to the American-Venezuelan claims commission of 1903, and none of them were presented to that or to any other tribunal for adjudication.

The action of the umpire of the American-Venezuelan claims commission in dismissing certain claims of the Manoa Company and the Orinoco Company which were presented to the commission can not be accepted as final, since the umpire, in looking to the language of the Fitzgerald contract rather than to the plain text of the protocol for a definttion of the authority of the commission to examine and adjudicate the claims presented to it, decided that the clause of the contract providing that any controversies growing out of the contract should be submitted to the local courts prevented the commission from passing on the merits of the case.

It should be added, in passing, that in his purely obiter discussion of the status of the Fitzgerald contract the umpire overlooked the fact that some of the claims of the Manoa Company and all of the claims of the Orinoco Company which were presented to the commission arose subsequently to the promulgation of the executive resolution of June 18, 1895, which reinstated the Manoa Company in all of its rights under the Fitzgerald contract, and therefore they could not have been invalidated by the failure of the Manoa Company in 1884–1886 to perform that contract, if such failure there had been as the umpire supposed.

Such a decision, disregarding alike the terms of the protocol, which gave rise to the commission and defined its jurisdiction, and the plain principles of justice and equity, which should have guided its judgment ever had there been no express provision to that effect, can not be regarded as a final or satisfactory disposition of these claims.

THE ORINOCO STEAMSHIP COMPANY.

That the Government of Venezuela recognizes that the awards of arbitral commissions are not necessarily binding upon the parties has already been remarked. That the decision in the case of the Orinoco Steamship Company falls within the well-defined limits of the principles which justify a government in refusing to be bound by such a decision has been pointed out in detail in the instruction of February 23, 1907, to the United States minister, which has been presented to the Government of Venezuela.

It has been shown that the decision of the umpire of the American-Venezuelan commission of 1903, in this case, rests on such serious errors of law and fact, and manifested such a complete disregard as well of the terms of the protocol as of those principles of justice and equity common not only to international law, but to the law of all civilized

states, that the United States could not be expected to regard the decision as a finality. This well-considered and well-supported opinion has not been changed by the simple statement of the Government of Venezuela that the questions involved in this case "have already been adjudicated."

THE NEW YORK AND BERMUDEZ COMPANY.

The Venezuelan note says that the claims of the Orinoco Steamship Company and the New York and Bermudez Company are "matters which have been adjudicated and closed in legal form and in accordance with the legal procedure required in each case."

Formerly when representations were made to the Venezuelan Government concerning the seizure of the property of the New York and Bermudez Company, that Government answered that it could not discuss the allegations made as to the irregular and arbitrary character of the seizure, because the case was pending before the courts. But now, after the lapse of nearly three years, the ground is taken that the matter is not one to be discussed because it has been "adjudicated and closed in legal form." As the result of this second position, the Venezuelan Government in effect declines to enter into any discussion of the subject at all. The proofs submitted by this Government of denial of justice and its representations that the claimant's property rights have been taken away arbitrarily and in gross violation of Venezuelan law have been passed over in utter silence.

It is, moreover, necessary to point out that the assertion that the case has been "adjudicated and closed in legal form" involves a strange misconstruction of the legal situation. Except for the decision of the federal and cassation court, rendered on August 7, 1905, declaring the Hamilton concession to be annulled, the company's legal rights, embracing its land and mining titles, stand judicially unassailed, save in so far as they were arbitrarily disregarded and violated in the *ex parte* order of sequestration under which the company's property was seized. It is also necessary to point out that even the proceeding for the annulment of the Hamilton concession has not been terminated, since no disposition has been made of the report of the appraisers appointed by the federal and cassation court to assess damages against the company in that suit. Although this report was filed on November 24, 1905, it still remains unacted upon.

In its instruction of February 23 last, the Department set out the claim of the New York and Bermudez Company in sufficient detail to acquaint the Venezuelan Government with specific wrongs complained of for which a remedy was courteously asked. This Government then made earnest protest against the continuance in the case of this perversion of judicial process. In reply thereto, no remedial action is promised or is there even a recognition that the facts stated by this Government call for an inquiry. Such a state of affairs constitutes a plain denial of justice and should not be permitted to exist.

CLAIM OF THE UNITED STATES AND VENEZUELA COMPANY.

In regard to the case of the United States and Venezuela Company, ordinarily known as the Crichfield case, the Venezuelan memorandum asserts that the Crichfield concession was not approved by the national Congress. This Government once more calls attention to the general resolution of the Venezuelan Congress, passed on the 25th of February, 1902, and published in the Official Gazette on March 5, 1902, approving all the acts executed by the citizen Gen. Cipriano Castro "during the period in which he has exercised the provisional presidency of the Republic."

Inasmuch as the Crichfield concession was granted by General Castro during his provisional presidency, it would seem to have been approved and validated by the above resolution in case such approval by the legislative department is required by the constitution of Venezuela. This resolution was called to the attention of the Venezuelan Government in the Department's instruction of February 23. The answer of the Venezuelan Government, however, is silent upon this point.

In regard to the statement in the Venezuelan reply that the Government of Venezuela has, through private conference, come to a friendly understanding with Mr. Crichfield, and is not able to understand why Mr. Crichfield does not "take up the matter again instead of leaving it in the state it is now in," this Government is constrained to reply that it does not understand that any arrangement has been reached which is satisfactory to the United States and Venezuela Company. On the contrary, it understands that having failed to reach a private settlement with the Government of Venezuela that company has notified the Government of Venezuela of its election to regard the action of that Government as amounting to a repudiation of the Crichfield *contract*, and that the company has therefore elected to rescind the said contract and

to claim from the Government of Venezuela all damages suffered by the company by reason of said repudiation, always providing that such election to rescind will become inoperative if the Government of Venezuela should elect to affirm and to comply with the terms of the original Crichfield concession.

Under these circumstances the Government of the United States is constrained to believe that the Crichfield concession was a valid and subsisting contract, duly ratified and binding upon the Government of Venezuela. That this contract has been improperly violated and repudiated by the Government of Venezuela, and that the United States and Venezuela Company, not having been able to agree upon any terms of settlement with the Government of Venezuela, has elected to regard the acts of that Government as a repudiation of the contract and to rescind the contract and claim damages for such repudiation unless the Government of Venezuela consents to acknowledge the validity of the original Crichfield concession and to comply with its terms.

My Government therefore instructs me to bring this case once more to the attention of the Venezuelan Government and to urge its immediate and careful consideration.

I am furthermore instructed to respectfully request your honor, in each and every one of the aforesaid cases, to favor me with a prompt reply, and I avail myself, etc.

WILLIAM W. RUSSELL.

[Inclosure.—Translation.]

Mr. Churion to Mr. Russell.

No. 766.

MINISTRY OF FOREIGN AFFAIRS,
Caracas, July 24, 1907.

SIR: I have the honor to acknowledge the receipt of your excellency's official note of July 9 of the current year.

My Government is quite surprised to see the somewhat uncordial phrases made use of in the note to which I refer, in judging of and qualifying the proceedings and resolutions of the executive power in the cases which your excellency mentions, phrases which are overlooked in answering your excellency's Government.

Upon a careful examination of the questions brought anew to the consideration of the Government of Venezuela, it will be found that the patience and discretion which the executive power has observed in said questions has been very considerable, a procedure adopted purposely, in view of the desire of maintaining on the firmest footing the friendly relations which it has striven to cultivate with the Government of the United States.

In the first place, Mr. Minister, the Government of Venezuela reiterates its position as stated in the memorandum which was addressed to you in answer to the one which you sent to this ministry on the 30th of March last, and proceeds now, in order to more clearly show the right and justice which it has, to make, point by point, various declarations which it deems pertinent.

The Government of Venezuela can not but think that the Government of the United States forgets the data and antecedents which should deter it from giving its protection to the so-called Mr. Jaurett, who, a fugitive from France, his native country, and from the tribunals of justice of Mexico, seeks now to shield himself under the folds of the American flag, to attack a country to which said Government has repeatedly given assurance of friendly sentiment.

The more surprising is it, taking into account that the above-mentioned Jaurett, on fleeing from Mexico in the year 1896 for the crime of a fraud, came immediately to Venezuela, knowing, without doubt, that there was no extradition treaty with the Mexican Republic, and without having previously complied with the requisites for maintaining an uninterrupted residence of five years in the United States, as prescribed by the laws then in force in that country, and without which he could not have acquired at that time a true American nationality.

It is also very strange that the Government of the United States does not take into consideration the conduct of Mr. Jaurett in Venezuela during the whole of the revolution called "Libertadora," when, under salary from the New York and Bermudez Company, this latter being the agent and principal accomplice in said revolution, he availed himself of the cable to send news to the Associated Press and important newspapers of the United States, by way of Curaçao, thus causing to be circulated alarming and even calumniating news against the constituted Government.

Your excellency's note makes a great point of the fact that the constitution of Venezuela limits the exercise of the sovereign right of expulsion from the territory of the Republic of pernicious foreigners, in the case where they have acquired domicile.

To this the Government of Venezuela answers that it never regarded Mr. Jaurett as domiciled in Venezuela, because, admitting the fact that he did reside in the country for several years, there is no proof that he made any declaration before the proper authorities of his wish to acquire domicile, as required by law, it being public and notorious that, notwithstanding the fact that he was married, he did not establish a home here with his wife, who lived all of that time out of Venezuela.

Lastly, Mr. Jaurett was considered for the greater part of his residence in Venezuela as an employee of the American legation, firstly, on account of his relations and business negotiations with Mr. Francis B. Loomis, envoy extraordinary and minister plenipotentiary of the United States up to the beginning of 1901; and afterwards for having been private secretary of Mr. Bowen up to 1904, when his services ceased, Mr. Bowen having acquired at that time from the French legation very unfavorable reports as to the character and antecedents of Mr. Jaurett. In accordance with the provisions of the law of foreigners of the Republic, of April 2, 1903, residence for the purpose of acquiring domicile is interrupted from the fact of being in the diplomatic service of another country. (See above-mentioned law and pp. 37, 43, 69, 138, 194, 219 222, 223, 224, and 229 of the pamphlet printed by the Government in Washington in 1905 and entitled "In the affair of the charges of Mr. H. W. Bowen, United States minister in Venezuela, against Mr. F. B. Loomis, First Assistant Secretary of State, and the countercharges of Mr. Loomis against Mr. Bowen.")

As to the revision treated of in the second case in your excellency's note, relative to awards made by the umpire of the Venezuelan-American Mixed Commission, in the claims as presented by the agent of the Government of the United States, Mr. Robert C. Morris, in the name of "George Turnbull," the "Manoa Company, Ltd.," the "Orinoco Company, Ltd.," and the "Orinoco Steamship Company," not only does the Government of Venezuela find no justifiable explanation for this pretension, but finds it strange and even surprising, as when the awards referred to were made, neither the aforesaid agent or representative of the Government of the United States before the Venezuelan-American Mixed Commission, nor even the Government of your excellency, made any protest at the time against those awards as rendered by the honorable Mr. Harry Barge, who as umpire selected by Her Majesty the Queen of the Netherlands had the especial and exclusive duty of settling any question in regard to which there was a disagreement between the respective commissioners of Venezuela and the United States, as happened in the cases treated of.

Not only was there no protest made to the Venezuelan-American Mixed Commission when the respective awards were made on February 20 and April 12, 1904, nor within a natural time limit or the limit which the established practices of international law allow for formulating such protests, but the sums awarded by the umpire to the Orinoco Steamship Company of $28,224.93, and to the Orinoco Company (Limited) of $26,620, figure since that time as a part of the sum which the Government of Venezuela owes to the Government of the United States and to other nations, in fulfillment of the sentences of the mixed commissions assembled in Caracas in 1903, and for which purpose it has to distribute between these creditors, pro rata, 30 per cent of the proceeds of the custom-houses of La Guaira and Puerto Cabello, after the payment to the preferred creditors, as decided by the Hague Tribunal.

Consequently, it is surprising that the Government of your excellency, three years after the awards have been made, should take the position that it takes to-day in regard to them, with absolutely no reason, justice, nor right on its side.

As to the fact that the Government of Venezuela protests against the awards of the umpire of the Venezuelan-Belgian Mixed Commission, in the case of the General Water Company of Caracas, and of the Venezuelan-Mexican Commission in the case of the claim of Messrs. Martinez del Rio Hermanos, the Government of your excellency does not give the reasons which can be adduced to establish the parity of the cases, as the protest to the Government of Venezuela in these cases was made the same day that the award was given, as being against the express stipulations of the protocols which fixed the jurisdiction of the mixed commissions; and consequently the Government addressed itself immediately to the Belgian representative in an official note accompanied by the protest which the attorney-general of the nation made before the commission; and furthermore immediately named a minister for Brussels with the principal object of explaining without loss of time the very just and powerful reasons on which Venezuela founded its right to ask for a revision of that sentence, and also that said reasons should be duly studied and considered by the Government of His Majesty the King, being as he is a friend of Venezuela.

In regard to the protest against the award in the claim of Messrs. Martinez del Rio Hermanos because the umpire had neglected to take into account the counter charges of the Government of Venezuela against that of Mexico, said counter charges having *been submitted* by mutual agreement for the examination and decision of the commis-

sioners, the umpire refusing to receive said protest, alleging that the commission had finished its work, and there being no diplomatic representative of the Republic of Mexico in this city, the Government of Venezuela decided to instruct its special agent at The Hague Tribunal, then in session, to make known to the powers there represented the justifiable grounds for that protest against an award which was enormously prejudicial to the fiscal interests of the Republic, detrimental not only to those interests but to the interests of the other creditor nations. The Venezuelan commissioner carried out his instructions, as may be seen by reference to the "proceso verbal" X of the session of the 10th of November, 1903; that is to say, one month and eight days after the rendering of the award in question.

From a perusal of your excellency's note to which I refer, and to the memorandum of March 30 last, the pretension to revise the award in the claim of "The Manoa Company, Limited," is made now by your excellency's Government, not in the name of the interested parties which figured as claimants against the Government of Venezuela, but in the name of a new party called the "Orinoco Corporation," of which nothing was known at the time of the presentation of the claim and of its examination and settlement.

This so-called "Orinoco Corporation," styling itself the transferee of rights which were declared by the umpire as without foundation whatever, in the claims presented by the "Manao Company, Ltd.," the "Orinoco Company, Ltd.," and "George Turnbull," and setting forth facts posterior to the awards in question, or in the year 1906, places itself in this novel position, viz, that with a change of name from the "Orinoco Company, Ltd.," to the "Orinoco Corporation," questions of more than twenty years old are renewed, which questions were especially examined and passed upon by the umpire, the honorable Mr. Barge; thus alleging that acts committed after the rendering of said award, and as a consequence of it, destroy its validity and strength, so that that which is a consequence of the award serves to annul it, or the principal depends on the accessory, or the cause on the effect.

The verdict of the honorable Mr. Barge in the Manoa claim and other claims established the incontrovertible principle, and in this he is in accord with the Northfield decisions of the honorable Judge Plumley, umpire of the Venezuelan-French Mixed Commission, in a similar case, that juridical questions in regard to the rescission of contracts between individuals and governments are of the exclusive jurisdiction of the tribunals of the country whose government made the contract, and it was in accordance with this principle that both umpires declared as out of their jurisdiction the examination and decision of those points, referring them to the Venezuelan tribunals of justice. If your excellency's Government invokes, as it does, the force of the decision of the honorable Mr. Barge to claim that the Government of Venezuela could not execute certain acts posterior to that decision, without a previous decision by the federal and cassation court on the rescission of the Fitzgerald contract, of which the "Manoa Company, Ltd." was transferred, it is thus using the validity and force of the question adjudicated by the umpire, and it is inconceivable that it asks at the same time for a revision of that verdict in favor of the "Orinoco Corporation."

The observation of your excellency's Government is so strong in qualifying the decision of the honorable Mr. Barge, when it says "that it rests on such serious errors of law and fact, and manifests such a complete disregard as well of the terms of the protocol as of those principles of justice and equity common not only to international law, but to the law of all civilized States," that the Government of Venezuela is bound to reject, in the name of that same international law and of that respect which its principles merit, expressions of such a nature, in referring to one who has filled the high functions of umpire, chosen by Her Majesty Queen Wilhelmina, who, in appointing him, complied with the request of both Governments. It can not be said of a sentence in a case of this kind that it is *manifestly unjust and at variance with the law of civilized states*, when said sentence has been pronounced in a question about which the interested parties and the commissioners of the two Governments have failed to agree and for which reason it was agreed to submit it to the decision of an impartial umpire.

Much less justifiable is the statement of your excellency's Government in regard to those awards when it is taken into consideration that the person who made those arrangements or protocols for the creation of the mixed commissions in question was Mr. Herbert W. Bowen, at that time United States minister in Caracas, and to the carrying out of those arrangements the Government of the Republic has devoted its attention and efforts, as your excellency knows, and as should be justly considered by those Governments to which the Republic religiously pays the sums awarded by the numerous decisions of the mixed commissions.

In the case of the New York and Bermudez Company it is quite strange that your excellency's Government should ask Venezuela to take away from the courts of the

Republic the suits instituted against the New York and Bermudez Company, and even suits in course of trial, to make out of this as it were an accumulation or increase of claims against Venezuela by means of an action entirely diplomatic, when the Government of the Republic is sure that neither the Government of the United States nor that of any other independent and sovereign nation would stand for such proceeding.

Your excellency's Government overlooks the fact universally known through the North American press, and proven in the suit in course of trial in the civil branch of the court of first instance of this section of the federal district, of the active part which the New York and Bermudez Company took in the revolution called "Libertadora" against the Government of Venezuela, a complicity which for itself alone would have been sufficient reason for any other Government less patient and less respectful of the usual judicial procedure to have taken immediate steps of a rigorous nature in accord with justice and perfect right: and the Executive is so empowered in the case of an armed rebellion against the constituted authorities, and can suspend for this purpose all rights and guarantees, the enjoyment of which are incompatible with the measures of defense for reestablishing order.

The attorney-general having instituted suits against the New York and Bermudez Company, in the respective tribunals, for act affecting its responsibility, first as transferee of the Hamilton contract, for nonfulfillment of its obligations, and again as an accomplice in the aforementioned "Libertadora" revolution, the proceedings in both suits have been in entire conformity to the laws of the country, and in order to invoke denial of justice it would be absolutely necessary to present proofs of such denial of justice. Can your excellency's Government, without irrefutable proofs, defend said company, and take the aggressive attitude that it does in qualifying the suits against the New York and Bermudez Company as *arbitrary and in gross violation of Venezuelan law?* Can it forget that the party thus defended has committed the crime of insurrection against the Government of Venezuela, and that in violating, as it has violated, the laws of neutrality in a country friendly to the Government of your excellency, it has incurred grave responsibilities for which the very laws of the United States inflict severe punishment on its nationals?

The Government of Venezuela does not suppose that your excellency's Government would care to be held in any manner responsible for the revolutionary acts of the New York and Bermudez Company, and for the immense damage caused the Republic by said acts. Consequently the judicial action of the representative of the nation has been directed exclusively against the New York and Bermudez Company, and not against your excellency's Government, the precautionary attachment of the asphalt mine being continued to await the result of the suits.

Consequently the properties of the New York and Bermudez Company have not been attacked by the Government of Venezuela, but the company itself, by its own acts, has made it necessary for the Government of the Republic to bring it to trial. These proceedings have been carried on and are still being carried on before the proper tribunals, with every means for defense and all the guarantees under the laws, without any proven denial of justice as alleged; and consequently to this case there could not have been, nor can there be applied now, any diplomatic procedure.

Lastly, I have to say to your excellency that the claim of the United States and Venezuela Company is much similar to that of the New York and Bermudez Company as regards the question of rescission of contract, which your excellency states that said company has elected to do, alleging as a reason therefor certain acts of the Government of Venezuela. There does exist, however, a cardinal difference in the proceeding adopted by one and the other party in both negotiations, as the Government of Venezuela, through the representative of the nation, has submitted to the proper tribunal the questions arising out of the contract of which the New York and Bermudez Company was transferee, but your excellency's Government attempts to take away the question of rescission of the Crichfield contract, and the question of consequent damages and losses, from the jurisdiction of the tribunals of justice of Venezuela, thus overlooking the laws of the Republic, the only ones applicable in matters of contracts, when the latter are celebrated and must be executed in its own territory. To attempt to substitute the proper legal action of the contracting parties in regard to rescission with diplomatic action is in manifest violation of universally established principles and laws, impairs the dominion and jurisdiction of the tribunals of the Republic, and at the beginning breaks one of the express provisions of said contract, which is textually as follows: "The doubts and controversies which may arise as to the interpretation and execution of this contract shall be resolved by the tribunals of the Republic, in conformity to its laws, and in no case can be a motive for international claims."

Your excellency's Government falls into a flagrant contradiction when it invokes decisions of the federal court of Venezuela and even of international tribunals, which have declared that contracts celebrated by the Federal Executive *can not be destroyed by a decree of said Executive and that the cancellation of a concession so granted is a question for judicial and not political action*, and when, as in the case of the Crichfield concession, it asks the Government of Venezuela to agree to the rescission of that contract on account of what the interested company chooses to do, thus doing away with all judicial proceedings. Such a repudiation and rescission of the contract laid down in your excellency's note as adopted by the "United States and Venezuela Company," alleging that no satisfactory arrangement has been reached with the Government of Venezuela, if assented to by the Federal Executive, disregarding judicial discussion in the competent tribunals, for settling upon damages and losses before an international tribunal, would be to go against the constituted faculties of the judicial power, which, as your excellency knows, is the third power in the Republic, whose prerogatives and jurisdiction can not be interfered with by the Executive power.

Surely it was in view of this that your excellency and the representative of the United States and Venezuela Company treated directly with the President of the Republic, and agreed to what was considered a satisfactory arrangement, but which remained in suspense by order of the Government of the United States, according to private statements made at that time.

Surely since that time began the attitude which is to-day taken against a Government which has always relied upon the greatest friendship on the part of your excellency's Government amongst those that favor it with their good and very cordial relation.

Consequently the Government of Venezuela hopes that in view of these antecedents and of the very good disposition which your excellency knows, and which is constantly shown, you will please explain to your Government those circumstances which can serve for the interests of both countries and for their good relations of friendship, this being the most appreciable result of the mission confided to those who are invested with a diplomatic character near a Government who really strives to cultivate with friendly nations the most cordial relations, cementing them always on the broad and sure basis of equity, justice, and right.

I take this opportunity to renew to your excellency the protests of my highest consideration.

I am, etc., LUIS CHURION.

Minister Russell to the Secretary of State.

No. 222. AMERICAN LEGATION,
Caraças, August 4, 1907.

SIR: I have the honor to inform you that the arguments in the case of Venezuela against the New York and Bermudez Company for participation in the Matos revolution are all in, and the verdict must be rendered at the third session of the court counting from Monday next. So that if the court has the usual number of sessions next week the verdict ought to be rendered by the end of the week.

I have, etc.,

WILLIAM W. RUSSELL.

Mr. Bacon to Mr. Russell.

[Telegram.]

AUGUST 6, 1907.

Answering yours July 27, you will present formal proposal for arbitration, following instruction No. 90.

BACON.

Acting Secretary of State to Minister Russell.

DEPARTMENT OF STATE,
Washington, August 6, 1907.

SIR: I have to acknowledge the receipt of your No. 215, of the 20th ultimo, reporting that a verdict in the case of Venezuela against the New York and Bermudez Company, pending in the court of first instance at Caracas, may be expected within ten or fourteen days.

Copies of your dispatch have been sent to Mr. John B. Moore and Messrs. Nicoll, Anable, and Lindsay.

I am, etc., ROBERT BACON.

Mr. Russell to Mr. Root.

[Telegram.]

WILLEMSTAD, VIA HAYTI, *August 7, 1907.*

No answer received my cable from Curaçao 27th in regard to pending cases. If decided to reply by cable send via Trinidad up to noon 7th instant.

RUSSELL.

Minister Russell to the Secretary of State.

No. 224.] AMERICAN LEGATION,
Caracas, August 15, 1907.

SIR: I have the honor to acknowledge the receipt of your instruction No. 94 of August 1, 1907, file No. 1948/17–18, with certain documents inclosed from the United States and Venezuela Company to the President of Venezuela.

On the day of the receipt of your instructions, August 13, I addressed an informal note to the minister for foreign affairs, inclosing the four documents as directed, and which are enumerated in the inclosed copy of my note of transmittal. The note, with documents, was received at the foreign office, as shown by the signature of the employee, on record in the delivery book of this legation.

I inclose you herewith the four duplicate documents forwarded with your instructions, and I have indorsed on the back a minute as to the disposition of the originals, with their translations.

I have, etc.,

WILLIAM W. RUSSELL.

Minister Russell to the Venezuelan Minister for Foreign Affairs.

AUGUST 13, 1907.

MY DEAR MR. MINISTER: You will recall that in the month of June last I made inquiry in regard to a communication sent last February in registered mail by the United States and Venezuelan Company to His Excellency General Castro. Your excellency reported to me that you had been advised from the office of the secretary-general to the President that the letter in question could not be found; in view

of which I herewith inclose to your excellency for transmittal to His Excellency the President the following communications from the United States and Venezuela Company:

(1) Duplicate original of communication of February 4, 1907, sent by registered mail to His Excellency General Cipriano Castro, President of Venezuela.

(2) Spanish translation of above.

(3) Communication from United States and Venezuela Company to His Excellency General Cipriano Castro, President of Venezuela, dated July 27, 1907.

(4) Spanish translation of above.

Hoping that your excellency will understand my reasons as stated for forwarding these communications in this way,

I remain, etc.,

WILLIAM W. RUSSELL.

Minister Russell to the Secretary of State.

No. 225.

AMERICAN LEGATION,
Caracas, August 16, 1907.

SIR: I have the honor to inform you that on Monday last, August 12, the court of first instance here rendered a verdict in the case of Venezuela against the New York and Bermudez Company for participation in the Matos revolution. The verdict is for over 24,000,000 bolivars, and being a very voluminous document I inclose for the present a translation of the dispositive part until I can obtain an official copy for forwarding.

I have, etc., WILLIAM W. RUSSELL.

AUGUST 18, 1907.

Have just obtained a copy of the Official Gazette with the verdict, which I herewith inclose.

[Inclosure.]

Translation of the dispositive part of the verdict against the New York and Bermudez Company.

Consequently administering justice in the name of the Republic, and by authority of the law, this suit is declared to be well founded, therefore the New York and Bermudez Company is condemned to pay the sum of 24,178,638.47 bolivars, the amount taken from the national treasury for subduing the revolution, as proven by vouchers; and to reimburse the nation in accordance with the valuation of appraisers for the following losses and damages:

1. The discredit which the Venezuelan nation suffered by the revolution in the estimation of the other nations with which it had international and mercantile relations.

2. The loss of Venezuelan citizens taken from the pursuits of commerce, agriculture, and the industries, and the activity of republican life.

3. The necessity for the creation of a war tax which produced from February, 1903, to June 30 of the same year 3,867,530.74 bolivars; and from
12,928,870.34 bolivars.

4. The falling off of the customs revenu
1900 to 1901, fell to 19,854,761.09 bolivar
years in which the revolution heade

5. The falling off of the revenues of the States, which from 9,040,203.63 bolivars from 1900 to 1901 fell to 6,081,429.42 bolivars in 1902, and to 4,079,185.45 bolivars in 1903.

All of which is proved by the evidence taken in this case, and inasmuch as the court decides that there has been no temerity in the defense there is no special condemnation for costs.

Minister Russell to the Secretary of State.

No. 227.] AMERICAN LEGATION,
Caracas, August 18, 1907.

SIR: I have the honor to inclose you herewith a copy of a protest from Mr. R. Dolge, managing director of The Orinoco Corporation, against a probable trespass of said corporation's property, and await your instructions in the matter.

I have, etc., WILLIAM RUSSELL.

[Inclosure.]

Managing Director of The Orinoco Corporation to Minister Russell.

CARACAS, *August 17, 1907.*

SIR: I have the honor to inform your excellency that I am reliably advised that Messrs. Juan Padrón Uztariz and Dr. Nicomedes Zuloaga are attempting to trespass upon, sell, and remove certain real and personal property belonging to The Orinoco Corporation, situated within the limits of its concession in the Orinoco delta.

As your excellency is aware, Messrs. Padrón and Zuloaga persist in disturbing The Orinoco Corporation in the peaceful possession and enjoyment of its property, by temerariously laying claim to certain valuable iron mines situated at and near Manoa on said concession, claiming such ownership under the so-called Turnbull titles, in spite of the facts:

1. That the umpire of the mixed commission of 1903 expressly declared the so-called Turnbull titles utterly null and void.

2. That the federal court and of cassation on March 1, 1906, expressly declared the suit in which Messrs. Padrón and Zuloaga attempted to establish the legality of their claim to said mining properties as being unfounded, because of the prior rights thereto under the Fitzgerald contract (owned by The Orinoco Corporation).

3. That on February 5, 1907, the same federal court and of cassation declared unfounded the attempted suit of intervention (terceria) instituted by Messrs. Padrón and Zuloaga in connection with the pending action of the Venezuelan Government against the Manoa Company (Limited) and the Orinoco Company (Limited), predecessors of The Orinoco Corporation.

4. That in accordance with the mining laws of Venezuela, both past and present, the said alleged mining titles in any event have lapsed because of failure to comply with said laws, even if all the aforementioned judgments did not exist to invalidate the same.

5. That leaving out of consideration all the foregoing facts which establish the invalidity of said alleged titles and many other reasons which might be adduced to prove the temerity of the parties in the matter, it is a further fact, recorded in the Department of State at Washington, that on May 31, 1905, The Orinoco Corporation acquired from George Turnbull each and all of his claims in the premises.

As I have told your excellency, and as is established by sundry photographs and reports of reliable engineers, there are now on the dump and at the mine at Manoa ready for shipment upward of 3,000 tons of high-grade Bessemer iron ore, representing a value of $20,000 to $25,000.

This ore was mined by the Orinoco Iron Company, one of the subcompanies of the Orinoco Company (Limited), of whom The Orinoco Corporation is the legitimate cessionary, and has been contracted by The Orinoco Corporation to a firm of responsible iron merchants at Philadelphia, Pa.

Although expressly denied all and every right by the highest courts of this country as well as an international court, and although they distinctly claim to have acquired their alleged rights in the void Turnbull titles *subsequent to the decision* of the mixed commission of 1903, Messrs. Padron and Zuloaga not only persist in utterly disregarding *the judgments* of these courts, but by making use of their well-known influence in cer-

tain executive departments of the Venezuelan Government they are deliberately conspiring to deprive The Orinoco Corporation of the recognition and enjoyment of its rights in the premises, and I am trustworthily informed that Mr. Juan Padron Uztariz has within the last few days left Caracas, bound for Trinidad and the Orinoco delta, for the deliberate purpose of trespassing upon the said property of The Orinoco Corporation at Manoa and if possible effecting the removal and shipment of the said iron ore.

I am furthermore reliably informed, and in fact Dr. V. Betancourt has himself admitted to me, that the alleged company, of which he claims to be vice-president, and to whom he claims to have ceded that certain contract granted to him on January 2, 1906, for the exploitation of certain timber lands situated in the Orinoco delta (a considerable portion of which, notably those on the island of Pedernales, as well as others situated on the north shore of the main branch of the river in the Orinoco delta, interfere with and are situated within the boundary of the Fitzgerald concession, owned by The Orinoco Corporation), is trespassing upon and despoiling the timber lands belonging to The Orinoco Corporation, particularly those on the island of Pedernales.

Although an additional clause added to said Betancourt contract under date of July 9, of this year, specifically warrants and defends the rights of third parties, I am informed that the parties exploiting said Betancourt contract are practically confining their operations to the island of Pedernales, from which they have cut a large number of valuable cedar and other trees, a recent shipment alone being reported to consist of more than 600 logs of such timber, valued at upward of $5,000.

All this is done with the direct knowledge of and under the protection of Government officials, both here in Caracas, as well as the local authorities of that region and the Venezuelan consul at Trinidad.

In spite of the fact that Mr. Secretary Root in his note to the Venezuelan Government expressly requested the maintenance of the statu quo pending a settlement or arbitration of the claim of The Orinoco Corporation and its predecessor companies, the Manoa Company (Limited) and the Orinoco Company (Limited), your excellency is aware that this request has been utterly and deliberately disregarded by the Government of Venezuela. The notorious difficulties for prompt and reliable communication with the Orinoco delta, still further aggravated by the recent elimination of the custom-house at Barrancas, whereby all traffic must be carried on via Ciudad Bolivar (except by special permits which are unavailable to The Orinoco Corporation and its agents, although its contract provides specifically for such facilities), place The Orinoco Corporation in imminent danger of being despoiled of a valuable portion of its quick assets, which represent a large direct investment, as well as the continuance of encroachment upon its valuable timber resources.

Therefore, as The Orinoco Corporation is utterly helpless and without remedy in the premises, except to appeal for aid to its Government, as resident manager of the Orinoco Corporation I respectfully call upon your excellency to make such representations to the Government of Venezuela, and also to the Department of State at Washington, as will *promptly* assure the protection of our real and personal property against trespass and despoilment and will insure the maintenance of the statu quo.

I have, etc.,

RUDOLF DOLGE.

Minister Russell to the Secretary of State.

[Telegram.]

WILLEMSTAD, *August 18, 1907.*
(Received 10.35 a. m.)

Verdict rendered yesterday against New York and Bermudez Company for participation in revolution for twenty-four million bolivars, which is amount estimated as spent by Venezuela for suppression revolution. According to verdict experts are to assess damages in five other particulars, such as falling off of revenues, killing of Venezuelan citizens, etc. This verdict is appealable to superior court and then to federal and cassation court.

RUSSELL.

Minister Russell to the Secretary of State.

CARACAS, *August 23, 1907.*

SIR: Referring to your No. 94 of August 1 (file No. 1948/17-18), inclosing certain documents from the "United States and Venezuela Company" for the President of Venezuela, I have the honor to inclose you herewith a copy and translation of the reply of the minister for foreign affairs to my informal letter transmitting the documents above referred to.

I have, etc., WILLIAM W. RUSSELL.

The Venezuelan Minister for Foreign Affairs to Minister Russell.

CARACAS, *August 20, 1907.*

MY DEAR MR. MINISTER: Referring to your excellency's very courteous letter dated the 13th of the present month, in which you advise me of the transmittal of two private communications, in English and Spanish, from the United States and Venezuela Company for the President of the Republic, I must state to your excellency that both documents, referring as they do to a matter which the Government of your excellency has already officially treated of by correspondence with this Department, I must presume that the company above referred to is cognizant of the fact that its case has already been officially discussed by the Government of your excellency.

With, etc.,

J. DE J. PAÚL.

Minister Russell to the Secretary of State.

No. 228.] AMERICAN LEGATION,
Caracas, August 24, 1907.

SIR: Referring to my cable of the 22d instant, which is confirmed in a separate dispatch, I have the honor to inclose you herewith copies of the latest correspondence between this legation and the Venezuelan foreign office in regard to the five pending cases in which American citizens claim redress from the Government of Venezuela.

I have, etc.,

WILLIAM W. RUSSELL.

[Inclosure 1.]

Minister Russell to the Venezuelan Minister for Foreign Affairs.

AMERICAN LEGATION,
Caracas, August 13, 1907.

MR. MINISTER: Referring to my communications of March 30 and July 9, 1907, in regard to the five pending cases in which American citizens claim redress from the Government of Venezuela, and to your excellency's answers thereto of April 23 and July 24, 1907, acting under instructions from my Government I now have the honor to expressly and formally propose to your excellency's Government that the claims against Venezuela in respect to the above-mentioned cases be submitted to arbitration before the permanent court of arbitration at The Hague, or, if Venezuela shall prefer, before a tribunal of three jurists not members of The Hague tribunal, to be selected in the usual manner.

Trusting that I may be favored with a reply at your excellency's earliest convenience, I take this opportunity, etc.,

WILLIAM W. RUSSELL.

[Inclosure 2.—Translation.]

Minister for Foreign Affairs to Minister Russell.

MINISTRY OF FOREIGN AFFAIRS,
Caracas, August 20, 1907.

MR. MINISTER: Referring to your excellency's communication of the 13th of the present month, and of the contents of which I informed the President of the Republic, in accordance with his instructions, I have the honor to answer your excellency that the Government of Venezuela adheres wholly to its position as expressed in the memorandum of April 23 and in the note of July 24 of the present year, in answer to the memorandum of March 30 and to your note of July 9 last.

I avail, etc.,

J. DE J. PAUL.

Minister Russell to the Secretary of State.

[Telegram.]

WILLEMSTAD, *August 22.—Received August 25, 1907.*

My formal proposition for arbitration of pending cases was presented on the 13th of this month. Minister for foreign affairs answered under date of 20th instant that, in accordance with instructions from the President, "the Government of Venezuela adheres wholly to its position as stated in its memorandum of April 23 and in the note of July 24 last, in answer to the memorandum of March 30 and to your note of July 9."

RUSSELL.

Acting Secretary of State to Minister Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 14, 1907.

When the Government of Venezuela pays the first installment due the United States on the awards of the mixed commission of 1903, you will write a note to the minister of foreign affairs embodying the following language: "My Government instructs me in accepting the first installment of money due from Venezuela on account of the awards of the mixed commission of 1903 to make the following statement: My Government insists upon a revision of the award in the case of the Orinoco Steamship Company. Pending final settlement of this question no portion of any moneys which may be paid by Venezuela will be considered as paid on account of or applicable to that award. As to the case of the Orinoco Company (Limited), however, my Government does not share the view of the Government of Venezuela that the acceptance of the sum awarded in this case is inconsistent with the position of the United States as set forth in my memorandum [a] of March 30 and my notes of July 9 and August 13." Referring

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[a] The Department is in receipt of the following letter, dated September 5, 1907, from Ralston & Siddons and George N. Baxter, counsel for the Orinoco Corporation:

"We confirm the statement made in our conversation with you this morning that the Orinoco Companies are content that in the arbitration of their claims against the Republic of Venezuela the respondent should be expressly accorded the right to allege and interpose in defense the decision which the umpire of the American-Venezuelan Mixed Commission organized at Caracas under the Protocol of December 17, 1903, made respecting the so-called Orinoco claims, which were presented to that commission for adjudication. The validity or invalidity of such alleged defense as to any or all of said claims to be determined by the tribunal of arbitration."

to your dispatch No. 229, of August 28, Department on August 26 sent you an official list of the American claims. You will be governed by that list, subject to the instructions contained in this cable as to the Orinoco Steamship Company and the Orinoco Company (Limited).

ADEE.

Minister Russell to the Secretary of State.

[Telegram.]

CURACAO, *September 27, 1907.*
(Received 3.50 p. m.)

Venezuelan Government has answered my note, sent in accordance with your cable instructions in accepting first payment, and says that it considers moneys received by me as paid on account of all the awards of the mixed commission of 1903, including the award to the Orinoco Steamship Company, this being in compliance with the terms of the signed protocols, and that it does not consider that there is any question pending in regard to award to said steamship company, as in its three notes it closed discussion in regard to revising the awards to the Orinoco Steamship Company and the Orinoco Company (Limited) and Manoa Company (Limited.)

RUSSELL.

Minister Russell to the Secretary of State.

No. 236.] AMERICAN LEGATION,
Caracas, September 28, 1907.

SIR: Referring to your cable of the 14th instant, which is confirmed in a separate dispatch, I have the honor to inform you that I have accepted the sum of 33,771.10 bolivars, the first installment of money due from the Venezuelan Government on account of the awards of the mixed commission of 1903.

The minister for foreign affairs advised me that the rate of exchange to be applied for gold dollars was 5.55 bolivars, but this means a New York draft at sixty days' sight for $6,084.88, whereas a sight draft at 5.65 bolivars is equal to $5,977.18, a difference in our favor of $107.70. I determined at first to purchase a sight draft, not knowing whether our Government is disposed to accept drafts at sixty days in payment of those awards, but, as I had cabled for instructions, I have concluded to await your answer.

On the 20th instant, after having received your cable instructions, I wrote to the foreign office accepting the first payment, with the reserve in regard to the award to the Orinoco Steamship Company. On the 21st instant the foreign minister answered my note.

The situation here is becoming more strained and a few days ago the Government commenced to publish in the local press, in English and Spanish, all of the correspondence between this legation and the foreign office since the issue of the yellow book which contained

my memorandum of March 30 and Venezuela's counter-memorandum of April 23. The position of our Government, as outlined in my note of July 9, is not published, but only Venezuela's answer to that note; thus the public in general only gets the one side of the affair.

My note in accepting the first payment of the American awards and the reply thereto is also published. The Constitutional, referring to the publication of these documents, says:

From the notes which we begin to publish to-day the country and the people who are following the affair between Venezuela and the United States will be made aware of the powerful reasons which have induced the Chief Executive in not agreeing to a revision of the awards of the mixed commissions that met in Caracas as international tribunals, as well as his reasons for not disregarding the verdict of our tribunals in matters exclusively of their jurisdiction, as claimed by the Government of the United States.

I would respectfully suggest to the Department that some means of cable communication with Curaçao be afforded me. I am entirely dependent on steamship communication, either with Curaçao or Trinidad, and can receive no answers to my cables under a week or ten days, and am compelled to wait three or four days before I can get a cable to Curaçao.

In regard to the five pending cases in which American citizens claim redress from this Government, as presented in the memorandum of March 30 and in subsequent notes, I would like to be informed as to whether our Government insists upon its position in regard to each and every case, I have so construed my instructions and have so been governed in my interviews with the foreign minister. I bring this matter up in case there should be a possibility of arranging two or three of the cases to the satisfaction of our Government. The possibility is very remote, however, that the Venezuelan Government will ever consent to an opening of the award to the Orinoco Steamship Company, or to an arbitration of the case of the New York and Bermudez Company.

I have, etc. WILLIAM W. RUSSELL.

[Inclosure 1.]

Minister Russell to the Minister for Foreign Affairs of Venezuela.

AMERICAN LEGATION,
Caracas, September 20, 1907.

MR. MINISTER: Referring to my communication of the 16th instant, I have the honor to inform your excellency that I have collected from the Bank of Venezuela the sum of 33,771.10 bolivars, a payment for the month of August, 1907, on account of the sum due the United States under the awards of the mixed commission of 1903.

In accepting this first installment of money due from the Venezuelan Government on account of the awards of the mixed commission of 1903, my Government instructs me to say that it insists upon a revision of the award in the case of the Orinoco Steamship Company, and that pending final settlement of this question no portion of any moneys which may be paid by Venezuela will be considered as paid on account of or applicable to that award.

As to the case of the Orinoco Company (Limited), however, my Government does not share the view of the Government of Venezuela that the acceptance of the sum awarded in this case is inconsistent with the position of the United States as set forth in my memorandum of March 30, and my notes of July 9 and August 13.

I take, etc.,

W. W. RUSSELL.

[Translation.—Inclosure 2.]

Minister of Foreign Affairs of Venezuela to Minister Russell.

CARACAS, *September 21, 1907.*

Mr. MINISTER: I am in receipt of your excellency's communication of yesterday in which you inform me that you have collected from the Bank of Venezuela the sum of bolivars 33,771.10 (thirty-three thousand seven hundred and seventy-one bolivars and ten centimos), payment for the month of August, 1907, on account of the sum due the United States under the awards of the mixed commission of 1903.

Your excellency further adds that in accepting this first sum of money due by the Venezuelan Government by reason of the awards of the mixed commission of 1903 your Government instructs you to say that it insists on a revision of the award in the case of the "Orinoco Steamship Company," and that pending a final settlement of this question no portion of any moneys paid by Venezuela will be considered as paid on account of or applicable to that award.

Your excellency concludes the note to which I refer by stating that in the case of the Orinoco Company (Limited) your Government does not share the view of the Government of Venezuela that the acceptance of the sum awarded in this case is inconsistent with the position of the United States as set forth in your memorandum of March 30, and your notes of July 9 and August 13.

The Government of Venezuela is constrained to answer categorically your excellency's note by quoting the following statements which your excellency makes: "That you have collected from the Bank of Venezuela the sum of bolivars 33,771.10 (thirty-three thousand seven hundred and seventy-one bolivars and ten centimos), *on account of the sum due the United States under the awards of the mixed commission of 1903,*" and, further on, "that in accepting this first sum of money due by the Venezuelan Government *by reason of the awards of the mixed commission of 1903* you are instructed by your Government to say," etc.

The receipt which your excellency gives for the sum of bolivars 33,771.10 (thirty-three thousand seven hundred and seventy-one bolivars and ten centimos) which you collected from the Bank of Venezuela, means for this Government as follows: That your excellency, acting in your character as representative of the Government of the United States, which is a creditor of the Government of Venezuela, by reason of the awards of the Venezuelan-American mixed commission, created by the Washington protocol of February 17, 1903, have received from the Bank of Venezuela the sum of bolivars 33,771.10 (thirty-three thousand seven hunderd and seventy-one bolivars and ten centimos) which is the first sum of money due by the Venezuelan Government by reason of said award, said sum amounting to 10.752 per cent of the 30 per cent of the proceeds of the custom-houses of La Guaira and Puerto Cabello for the month of August last, said 30 per cent being set aside for the payment of all the awards of the Venezuelan-American mixed commission and of those of the other commissions, in strict compliance with the terms of the above-mentioned protocol of February 17, 1903, and of the additional verdict of The Hague tribunal of February 22, 1904.

The Government of Venezuela must take due notice of your excellency's communication referring to the total of the sum received from the Bank of Venezuela as the first sum on account of the amount which this Government owes under the awards of the Venezuelan-American mixed commission, said sum and the further sums which it will continue to deliver monthly for the same purpose being set aside solely and exclusively for the definitive payment of all the awards of the above-mentioned commission.

The Venezuelan Government is not concerned with the way in which the Government of the United States disposes of the amount already received, nor of those sums which it may continue to receive, after said amounts are in possession of your excellency's Government. For its discharge the Government of Venezuela merely has to deliver to your excellency the sums it is obliged to pay in execution of the protocol signed at Washington on February 17, 1903, in accordance with the awards of the Venezuelan-American mixed commission, created by that protocol, and also in accordance with the verdict of The Hague tribunal on February 22, 1904, which decreed that the Government of Venezuela should pay the claims of the nonblockading nations, as awarded by the mixed commissions of 1903, after the awards to Germany, England, and Italy were satisfied.

The receipt from your excellency is a proof that the Government of Venezuela is fulfilling its obligation to distribute among the creditor nations, under the awards of the mixed commissions, the monthly 30 per cent of the receipts of the custom-houses of La Guaira and Puerto Cabello in the proportion which the sums due each bear to the sum total of the awards of the several commissions. Your excellency was duly

notified of that proportion in a note from this ministry, dated August 27, No. 924, fixing at 10.752 per cent said proportion, which corresponds to $436,441.90, the total of all the awards of the Venezuelan-American mixed commission, and your excellency acknowledged the receipt of my note on the 29th of the same month.

Your excellency states that your Government insists on a revision of the award in the case of the Orinoco Steamship Company, and considers as pending a definite settlement of that question. The Government of Venezuela has given no motive for the Government of your excellency to think that a definite settlement of that question is pending, as in its memorandum of April 23, 1907, and in its notes of July 24 and August 20, in answer to the memorandum and notes from your excellency of March 30, July 9, and August 13, it did not accede to the pretensions of your excellency's Government as to revising the arbitral awards in the cases of the Orinoco Steamship Company, Manoa Company (Limited), and Orinoco Company (Limited), for the reasons therein expressed, thus closing definitely discussion on this matter.

The Government of Venezuela deems it opportune, in view of the insistence of the Government of the United States, to present for the high consideration of your excellency's Government the text of the two notes of March 24 and 26, 1903, from His Excellency Mr. John Hay, then Secretary of State, to His Excellency Don Rafael S. Lopez, minister of Salvador, in answer to the memorandum in which said minister requested a revision or reopening of the award made by Sir Henry Strong and Hon. N. Dickinson in the case of the Salvador Commercial Company and others against the Government of Salvador.

Said notes are as follows:

"STATE DEPARTMENT,
"*March 24, 1903.*

"The undersigned, Secretary of State, has the honor to inform the Minister of Salvador, after a due consideration of the memorandum from the minister of March 4, 1903, that the Government of the United States does not find in it any reason for altering the opinion before expressed, that it is in no way empowered to revise or reopen the award made in the case of Salvador Commercial Company and others against the Government of Salvador. A failure to carry out the award would imply in addition a grave discourtesy for the eminent arbitrators who examined this case and a serious offense against the cause of arbitration. The Government of the United States expects, consequently, that the Government of Salvador will comply with the terms of the protocol of arbitration signed by its Executive and ratified by the National Assembly.

"JOHN HAY.

"DON RAFAEL S. LOPEZ, *Minister of Salvador.*"

"DEPARTMENT OF STATE,
"*March 26, 1903.*

"SIR: I have the honor to acknowledge the receipt of your communication of the present month, which has been taken into consideration. The Department considers in no way applicable to the case the principles and authorities you invoke in support of your contention that the award made by the arbiters in the case of the Salvador Commercial Company and others against the Government of Salvador is illegal and null. I do not see any reason for changing the view as expressed in my note of the 24th of the present month. As indicated in that note this Government expects that the Government of Salvador will comply with the terms of the protocol of arbitration.

"Accept, sir, etc.,

"JOHN HAY.

"DON RAFAEL S. LOPEZ, *etc.*"

These laconic and decisive answers from His Excellency Mr. Hay, denying absolutely to revise the Strong-Dickinson award are presented by the Government of Venezuela to the Government of your excellency, with all the significance with which they are invested, as bearing the signature of that eminent statesman, who by a rare coincidence also signed the protocol of February 17, 1903, by which the claims of the Orinoco Steamship Company and the Orinoco Company (Limited) were submitted to the decisions of the commissioners, and in case of the disagreement of the latter to the umpire chosen by the Queen of the Netherlands, with the stipulation that those awards should be *definite and conclusive.*

I avail myself of this opportunity, etc.,

J. DE J. PAÚL.

The Acting Secretary of State to Minister Russell.

No. 108.] DEPARTMENT OF STATE,
Washington, October 2, 1907.

SIR: Referring to your dispatch of August 23 last, I inclose copy of a letter from Mr. R. Floyd Clarke, counsel for the United States and Venezuela Company, who requests that the Department may make one more effort to obtain from the Venezuelan Government an explicit admission or denial of the receipt, on or about March 1 last, of the letter dated February 4 last, and addressed by the company to President Castro.

You will make the inquiry desired by Mr. Clarke, either in the form indicated in his letter or substantially in that form, in order that a reply may be received to the direct question whether or not the documents in question were received by President Castro.

I am, etc.,

ROBERT BACON.

[Inclosure.]

The attorney for the United States and Venezuela Company to the Acting Secretary of State.

NEW YORK, *September 19, 1907.*

SIR: I have the honor to acknowledge your kind favor of the 17th instant, together with the annexed communication, and thank you for the courtesy of the Department in the matter.

In regard to this matter I must, for the protection of my clients, petition the Department to make one more effort, if not inconsistent with their conception of diplomatic courtesy in the premises, to obtain a categorical admission or denial on the part of the Venezuelan Government as to whether they received, on or about the 1st day of March, 1907, the important letter bearing date the 4th day of February, 1907, signed by the United States and Venezuela Company, and mailed, by registered mail, from New York City on the 20th day of February, 1907, to President Castro. I am impelled to do this by the fact that the former request of this Department for information in the matter has been evasively answered, and as the rights of the parties in future arbitration, if any, will be seriously affected by the question of whether the notice of rescission was received in March or in August, 1907, it is of the utmost importance to now obtain an admission or denial on this subject-matter.

The importance of this matter lies in the following fact: Electing, as we have done, to rescind the contract because of the repudiation by the Venezuelan Government of its obligation to allow us to export and import free of taxes, we are compelled, in order to recover the damages of the expenditures made on the faith of the concession, to tender back to them the concession and the property. The property has been kept in repair and good condition up to the time of this tender and the further time mentioned in it, of up to the first day of April, 1907, awaiting a due answer from the Venezuelan Government with reference to said notice and election, acknowledging its receipt as requested, and to give the Venezuelan Government an opportunity to reaffirm said concession if their acts up to date did not amount, in their contention, to a rescission of the same, we thereby put the burden upon the Venezuelan Government to say then and there whether they affirmed or disaffirmed the concession and prevented them from in the future taking the point that all their acts up to date had not been a disaffirmance of the same, a defense which Umpire Plumley, in the French-Venezuelan arbitration of August, 1903 (Rallston's report), held to be a bar to the French-Venezuelan Railway as against Venezuela for the rescission of their railway concession. In other words, the notice of rescission sent by the United States and Venezuela Company was in the alternative.

First. That by reason of our understanding of the acts of Venezuela down to date, we deemed that they had intentionally broken the contract by disaffirming its legal existence, and therefore we claimed the right to rescind, to restore the property, and recover back our damages.

Second. If the Venezuelan Government thought her acts up to date did not amount to a breach on her part, and a disaffirmance on her part, of our concession, then we

requested her to notify us to that effect, and we would then willingly accept the concession and go on with it.

Third. We further notified her that we had kept the property in repair, and would keep it in repair until the 1st of April, 1907, to give her an opportunity to notify us of her position in the matter, and that if we received no notice from her on or before that date our notice o' rescission of the contract would stand, and we would look to her for damages.

You will note that this kind of a notice of rescission prevents Venezuela, in subsequent arbitration, from taking advantage of the defense they successfully interposed in the French-Venezuelan railway case above referred to, and puts the burden upon them, in any court of equity, to either answer this communication stating that they had not intended to break the contract, or had not disaffirmed it, which would be an affirmance of the contract and would satisfy us, or by refusing to answer on receipt they would be equitably bound as having taken the position that they intended to disaffirm the contract and stood on that disaffirmance, and would be estopped to claim to the contrary in the absence of fairly notifying us as to what position they took in answer to this communication.

All this careful drafting of this notice in the alternative form suggested to escape the technical defense so successfully raised in the French-Venezuela railway case would have accomplished its entire result if we had the proof that Venezuela received these documents in a reasonable time prior to the 1st of April, 1907. The difficulty now before us is that in disaffirming the contract by not answering this communication either in March or August, when Venezuela has received it, she will now raise the further question on subsequent arbitration, as follows:

1. That she did not receive this communication until August, 1907.

2. That between the 1st of April, 1907, and August, 1907, the rainy season in Venezuela, the property, the railroad, bridges, etc., were completely destroyed by floods and the elements, etc. (we are speaking now merely of the claim they will make, not of the facts), and that hence our tender back of the porperty is void because we tendered them not the property in good repair, but a ruined plant and railroad, whence they will claim that there are no damages or that the damages should be very small.

Under these circumstances we desire to place the Venezuelan Government in the position of catagorically admitting or denying the receipt, on or about February 20, 1907, of the letter mailed to President Castro containing this notice from New York City on February 20, 1907. We want this for two reasons:

First. That we are morally certain, from information in our possession, that the letter was received on the 27th of February, and if they deny it we may be able to prove the contrary of the denial, and thus stultify their State Department before the arbitrators.

Second. This is our only chance to get an admission or denial on this question, for, as there are no pleadings, in the strict sense, before the arbitration board, we will simply be put to our proof of the matter.

Third. We are not now certain whether we have the proof, as in matters of this description no receipt is received from the addressee in the course of the practice with registered mail matter delivered in foreign countries.

We have now a tracer in the New York post-office tracing the delivery of this letter, and will probably be able, with a great deal of trouble and bother, to prove its receipt in the end, but are not yet certain of what the result of the tracer will be.

To show the necessity of further correspondence to obtain a categorical answer as to whether this letter of February 4, 1907, mailed February 20, 1907, was duly received we call your attention to Mr. Root's letter to Mr. Russell of May 10, 1907, No. 87, in which he says: "It is requested that the Department ascertain whether or not the papers referred to have been received by the Venezuelan authorities," and the answer of June 12, 1907, from the Venezuelan Government, which says: "I have the honor to state that the secretary-general to the President reports to the minister of foreign affairs that the letter in question can not be found."

May I therefore, on behalf of the company, beg of you the further courtesy of having the American minister write to the Venezuelan foreign minister, substantially saying:

"SIR: Referring to my communication to you on or about May 10, in regard to certain documents in English and Spanish, containing certain resolutions adopted by the board of directors of the United States and Venezuela Company, and which were contained in a letter addressed by that company to President Castro, bearing date February 4, 1907, and mailed from New York City by registered mail on February 4, 1907, addressed to President Castro, being the same letter and documents which are referred to in your answer of June 12, 1907, and duplicates of which are referred to in my letter to you of August 13 and your courteous answer to the same of August 20, I would say that my Government would be pleased to know whether the said documents, mailed

on February 20, 1907, by registered mail, to President Castro, were received in due course of mail on the 27th of that month, or at what date, if any.

"Assuring you, etc."

I would add that my suggestion of a letter along these lines is merely to lighten your labor by calling your attention to the specifications of the details to be covered in case you should determine that you can properly accede to my request.

Thanking you again for your kind assistance and attention in this matter. I am, etc.,

R. FLOYD CLARKE.

Minister Russell to the Secretary of State.

No. 243.] AMERICAN LEGATION,
Caracas, October 26, 1907.

SIR: Referring to your No. 108, of October 2, 1907 (File No. 1948/25), inclosing copy of a letter from Mr. R. Floyd Clarke, counsel for the United States and Venezuela Company, I have the honor to inclose herewith a copy of my letter to the minister for foreign affairs on the lines suggested by Mr. Clarke, and a copy and translation of the minister's reply.

I adhere substantially to the form as indicated by Mr. Clarke, but omitted to refer to the day on which the documents are alleged to have been received. Mr. Clarke has apparently made some mistake as to the date of mailing the documents, or the date on which he states they were received in Caracas.

According to the statement of Mr. Clarke the documents were "mailed by registered mail, from New York City, on the 20th day of February, 1907," and "we are morally certain, from information in our possession, that the letter was received on the 27th of February."

The American mail steamers leave New York every Saturday, so that if the documents were mailed on February 20, Wednesday, they would have left on Saturday's steamer, February 23, and our records show that this steamer (the *Maracaibo*) arrived in La Guaira on Sunday afternoon of March 3, and no mail was distributed until the following day, March 4. It would be impossible for mail posted in New York on Wednesday, February 20, to reach Caracas on February 27.

I have, etc., WILLIAM W. RUSSELL.

[Inclosure No. 1.]

Minister Russell to the Venezuelan Minister for Foreign Affairs.

MR. MINISTER: Referring to a conversation I had with your excellency in the month of June last in regard to certain documents in English and Spanish, containing certain resolutions adopted by the board of directors of the United States and Venezuela Company, and which were contained in a letter addressed by said company to His Excellency President Castro, bearing date of February 4, 1907, and mailed from New York City by registered mail on February 20, 1907, addressed to His Excellency President Castro, duplicates of which are referred to in my letter of August 13, and your excellency's courteous answer of August 20, I am now instructed by my Government to say that it would be pleased to know whether the documents in question, mailed on February 20, 1907, by registered mail to His Excellency President Castro, were received in due course of mail that month, or at what date, if any.

I take, etc.

W. W. RUSSELL.

[Inclosure No. 3.]

The Venezuelan Minister for Foreign Affairs to Minister Russell.

CARACAS, *October 17, 1907.*

MR. MINISTER: I have the honor to refer to your excellency's courteous communication of the 16th of the present month, which treats of a conversation which I had with your excellency in the month of June last, in regard to a letter in English and Spanish containing certain resolutions adopted by the board of directors of the United States and Venezuela Company, and addressed by said company in registered mail from New York City on the 20th of February, 1907, to the President of the Republic, duplicates of which are referred to in your excellency's letter of August 13, and in my reply thereto of the 20th of the same month.

Your excellency adds that you now have instructions from your Government to say to me that it would be pleased to know whether the documents in question mailed on February 20, 1907, by registered mail, to President Castro, were received in due course of mail that month or on what date.

As I explained to your excellency in our conversation above referred to, in the month of June last, an investigation was then made as to the receipt of the letter and documents in question, it developing that the President of the Republic, who at the date of the sending of the letter was sick at the watering place of Macuto, had no notice of that correspondence, and at the same time that an investigation was made in the archives of the office of the secretary-general as to whether or not the above-mentioned letter existed, said letter not being found, it being entirely unknown consequently, as I had occasion to state to your excellency, whether said documents arrived in this city or had been lost in any way.

I avail, etc., J. DE J. PAUL.

The Secretary of State to Minister Russell.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 16, 1907.

Write a note to the minister of foreign affairs embodying the following language:

"My Government hereby acknowledges the receipt from the Venezuelan Government of $15,719.69, the same to be applied to the payment of awards made to American claimants by the Venezuelan-American Mixed Claims Commission of 1903. My Government observes the statement in your excellency's note of September 21 that the sums now being set aside by your excellency's Government are for the payment of all the awards made to the nonblockading nations by the Venezuelan-American Mixed Commission, but that the distribution of these sums among the various claimants of the creditor nations is a matter in which the Venezuelan Government is not concerned. My Government, therefore, will distribute among the various American claimants, excluding the Orinoco Steamship Company, the sums already received and to be received. Concerning the receipt of moneys for and the payment of the same to the Orinoco Steamship Company and the Orinoco Company (Limited) on account of the awards made to them by the Venezuelan-American Mixed Commission, my Government adheres to the position set forth in my note to your excellency of September 20."

ROOT.

Minister Russell to the Secretary of State.

No. 269.] AMERICAN LEGATION,
Caracas, January 4, 1908.

SIR: Referring to your cable of December 19, received in Caracas December 28, and which is acknowledged in a separate dispatch, I I have the honor to inform you that I addressed a note to the minister for foreign affairs in accordance with your instructions, a copy of which note is inclosed.

On January 3 the minister for foreign affairs answered my note, copy and translation of which I inclose.

I have, etc., WILLIAM W. RUSSELL.

[Inclosure No. 1.]

Minister Russell to the Venezuelan Minister for Foreign Affairs.

CARACAS, *December 30, 1907.*

MR. MINISTER: Referring to my communication of December 7 last, in regard to the quotas collected and forwarded to Washington, said quotas being due under the Venezuelan-American Mixed Commission of 1903, I have the honor to state that the draft mentioned in my communication has reached Washington and that my Government hereby acknowledges the receipt from the Venezuelan Government of $15,719.69, the same to be applied to the payment of awards made to American claimants by the Venezuelan-American Mixed Claims Commission of 1903.

My Government observes the statement in your excellency's note of September 21 that the sums now being set aside by your excellency's Government are for the payment of all the awards made to the non-blockading nations by the various mixed commissions of 1903, but that the distribution of these sums among the various claimants of the creditor nations is a matter in which the Venezuelan Government is not concerned. My Government, therefore, will distribute among the various American claimants, excluding the Orinoco Steamship Company, the sums already received and to be received. Concerning the receipt of moneys for and the payment of the same to the Orinoco Steamship Company and the Orinoco Company (Limited) on account of the awards made to them by the Venezuelan-American Mixed Commission, my Government adheres to the position set forth in my note to your excellency of September 20.

I take this occasion to renew to your excellency, etc.,

W. W. RUSSELL.

[Inclosure—Translation.]

Venezuelan Minister for Foreign Affairs to Minister Russell.

CARACAS, *January 3, 1908.*

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's courteous communication of the 30th of last month, in which you are pleased to state to me that, referring to your communication of the 7th of the same month of December, your excellency's Government acknowledges the receipt from the Venezuelan Government of $15,719.69, the sums collected from the Bank of Venezuela by your legation, in the months of September, October, and November last, and which are to be applied to the payment of the awards made to American claimants by the Venezuelan-American Mixed Commission of 1903.

In regard to the statement which your excellency makes in the above-mentioned note that your Government will distribute among the various American claimants, excluding the Orinoco Steamship Company, the sums already received and to be received and that concerning the receipts of moneys for and the payment of the same to the Orinoco Steamship Company and the Orinoco Company (Limited) on account of the awards made to them by the Venezuelan-American Mixed Commission, your Government adheres to the position set forth in your note to this ministry of September 20 last. I am constrained in turn to say to your excellency that the Government of

Venezuela ratifies and maintains everything that was stated in my note to your excellency of the 21st of the same month of September with reference to the payment that is being made and will continue to be made of the sums awarded by the Venezuelan-American Mixed Commission of 1903 in favor of American claimants, without any distinction whatever.

I avail myself, etc., J. DE J. PAUL.

The Secretary of State to Minister Russell.

No. 121.] DEPARTMENT OF STATE,
Washington, January 21, 1908.

SIR: I have to acknowledge the receipt of your dispatch No. 269, of the 4th instant, inclosing copies of the correspondence exchanged between you and the Venezuelan minister of foreign relations in the matter of the receipt for the quota paid by the Venezuelan Government in satisfaction of the awards of the Venezuelan-American Mixed Commission of 1903.

In reply I have to say that, in acknowledging receipt of all payments by Venezuela on account of awards made by the American-Venezuelan Commission of 1903, this Government instructs you to say that it adheres to its position as set forth in your note of December 30, 1907, and that the payment in question is accepted and will be distributed in accordance with the terms of that note.

I am, etc.,

ELIHU ROOT.

Nicoll, Anable, Lindsay & Fuller to the Secretary of State.

NEW YORK, *January 30, 1908.*

DEAR SIR: We beg to inclose herewith a schedule entitled "Schedule of 132 contracts granted by the Venezuelan Government from March 14, 1883, to August 14, 1905, which are in conflict with the Hamilton concession, or which have a bearing, direct or indirect, upon the contentions of the Venezuelan Government in the recent litigation with the New York and Bermudez Company." This schedule was prepared by Capt. Robert K. Wright, the former representative of the New York and Bermudez Company in Venezuela, as the result of an exhaustive review of all of the "Official Gazettes" during the period stated. You will observe that references in each case are given to the serial number of the Official Gazette from which the item is taken. A complete file of the Official Gazette is in the office of the New York and Bermudez Company at Philadelphia. Many of the contracts show upon their face that they are in direct conflict with the Hamilton concession; others are antagonistic to the attitude taken by the Government in the recent litigation. As, for instance, there are a number of cases where additional articles to the Hamilton concession were confirmed by Congress and treated in all respects the same as if they were new and original contracts. This supports the contention of the New York and Bermudez Company and is in direct opposition to that of the Venezuelan Government, which is, that an additional article, such for instance as the additional

article to the Hamilton contract for the channeling of the Guarapichie River, did not require ratification by Congress.

We also inclose another statement showing the shipments of Bermudez asphalt from the property of the Bermudez Company at Guanoco, Venezuela, made by A. H. Carner, receiver, to the A. L. Barber Company, New York City, since seizure and confiscation of the property by the Venezuelan Government in July, 1904, and also showing shipments made by the New York and Bermudez Company from its property from 1891 until July, 1904, the date of the confiscation of the property by President Castro.

There are separate affidavits relative to each separate shipment made by A. H. Carner, already on file in your Department, but there has not been formerly filed with you a schedule which gives a summary of these shipments. We therefore request that these documents be given consideration, together with the other documents which have been filed from time to time in this controversy. It is our opinion that these exhibits will be a valuable and instructive part thereof.

With much respect, etc.,

NICOLL, ANABLE, LINDSAY & FULLER.

[Inclosure.]

Shipments of Bermudez asphalt, from the property at Guanoco, Venezuela, of the New York and Bermudez Company, made by A. H. Carner, receiver, to the A. L. Barber Asphalt Company, New Yory City, since seizure and confiscation of the property by the Venezuelan Government in July, 1904.

Name of vessel.	Date of arrival.	Number of tons.
Kennet	Sept. 19, 1904	2,000
Hermia	Oct. 22, 1904	3,000
Whitehall	Dec. 28, 1904	2,800
Total for 1904		7,800
Aquila	Jan. 18, 1905	2,800
Aquila	Mar. 11, 1905	2,800
Merchiston	June 4, 1905	2,700
M. C. Holm	July 18, 1905	3,400
M. C. Holm	Sept. 14, 1905	3,400
M. C. Holm	Nov. 9, 1905	3,400
Total for 1905		18,400
M. C. Holm	Jan. 10, 1906	3,350
M. C. Holm	Mar. 9, 1906	3,350
M. C. Holm	May 18, 1906	3,350
M. C. Holm	July 25, 1906	3,150
Constance	Aug. 30, 1906	2,750
M. C. Holm	Oct. 5, 1906	3,250
Constance	Nov. 5, 1906	2,350
Total for 1906		21,550
M. C. Holm	Jan. 2, 1907	3,160
Parran	Mar. 2, 1907	2,570
M. C. Holm	Mar. 13, 1907	3,400
Nanette	Apr. 25, 1907	3,250
Parran	Apr. 30, 1907	2,255
M. C. Holm	May 25, 1907	3,500
Enfield	June 16, 1907	3,036
Parran	July 16, 1907	2,350
Nanette	Aug. 18, 1907	3,250
Enfield	Sept. 15, 1907	3,100
Parran	Oct. 20, 1907	2,248
Nanette	Nov. 14, 1907	2,500

Shipments of Bermudez asphalt, from the property of Guanoco, Venezuela, of the New York and Bermudez Company, made by A. H. Carner, receiver, to the A. L. Barber Asphalt Company, New York City, since seizure and confiscation of the property by the Venezuelan Government in July, 1904.

Name of vessel.	Date of arrival.	Number of tons.
Enfield	Dec. 2, 1907	3,360
Parran	Dec. 28, 1907	2,500
Total for 1907		40,479
Nanette	Jan. 29, 1908	2,500
SHIPMENTS OF SAME TO ENGLAND.		
Sarstoon	May 1, 1905	800

SUMMARY.

	Tons.
Total shipments to the United States:	
1904	7,800
1905	18,400
1906	21,550
1907	40,479
1908	2,500
Total shipments to England:	
1905	800
Grand total	91,529

Shipments of Bermudez asphalt by the New York and Bermudez Company, from its property at Guanoco, Venezuela, from 1891, which was the first year in which shipments were made in commercial quantities, until the seizure and confiscation of the property by President Castro, in July, 1904:

	Tons.		Tons.
1891	250	1898	
1892	1,130	1899	11,825
1893	1,743	1900	15,914
1894	7,038	1901	21,767
1895	3,025	1902	8,293
1896	5,655	1903	23,783
1897	11,790	1904 (six months only, until July)	15,062

The cessation of shipments in 1898 was due directly to the beginnings of the conspiracy to rob the company of its property, taking the form at that time of a grant by the Government of the title to the property to native Venezuelans.

During the large part of 1902 the property of the company was entirely cut off from the rest of the world by blockades growing out of the revolutionary movement at that time.

The shipments in 1904 are for a little over six months, or until the seizure of the property in July, and were therefore at the rate of nearly 30,000 tons per annum.

The above tonnage figures are for crude asphalt. In 1902 and 1903 small quantities of refined were shipped, but the amounts are here included in the crude equivalent.

[Inclosure to letter of Nicoll, Anable, and Lindsay.]

In the matter of the controversy between the New York and Bermudez Company and the Venezuelan Government.

Contracts of the Venezuelan Government, 1883–1905.

The following are extracts from the Official Gazette, the official publication of the Venezuelan Government, relative to various contracts of the Venezuelan Government, between the years 1883 and 1905, including the Hamilton concession. A large part of these contracts are in direct violation of the Hamilton concession; while others

are here referred to as having a direct bearing upon the recent contentions of the Venezuelan Government in its litigation with the New York and Bermudez Company.

References to the Hamilton concession are found under the following numbers: 10, 14, 22, 24, 26, 31, 32, 39, 44, 69, 70, 95 and 97. This record proves conclusively, that, while the original concession with the first additional article was duly approved by Congress in accordance with law, the second, third, and fourth additional articles were never so approved by Congress, and therefore never became valid or effective.

The Venezuelan Government first claimed that the second additional article had been ratified by Congress; and later, that such ratification was not necessary. This official record conclusively shows that the second additional article was never ratified by Congress, and, furthermore, that it was the uniform practice of the various governments, from 1883 down to 1905, when the property of the New York and Bermudez Company was confiscated, to treat additional articles as separate and independent contracts, requiring, in all cases, the ratification of Congress in order to make them valid and effective.

The record also proves that in scores of cases the Venezuelan Government, acting through its President and Congress, granted other contracts in complete disregard of the rights of the New York and Bermudez Company.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
	1883.						
1	Mar. 14	2909	Min. of fomento M. Carabano.	Luis Vallenilla	Navigation by steamers between Ciudad Bolivar and Trinidad.	5 years with renewal.	Extended later to ports in State of Bermudez. See No. 3.
2	May 7	2952	do	Geo. A. Philips and Horacio R. Hamilton.	All asphalt in Venezuela in whatever form, and use of all ports for export.	25 years with renewal.	Canceled later on. See No. 20. Approved by Congress June 23, 1883. See No. 3009 of July 13, 1883.
3	May 30	2972	do	Luis Vallenilla	Navigation by steamers between La Guaira and various ports in State of Bermudez.	10 years	See No. 7. On July 19, 1883, this contract extended to include the port of Maturin for 10 years. See Official Gazette No. 3026 of August 14, 1883.
4	June 27	2998	do	Carlos H. Mijares	Right to take all rope-making plants in Republic including Bermudez.	do	This took all the fibrous plants out Hamilton concession.
5	do	2998	do	Sociedad Anonima de la Costa Firma.	Establishment of a mining colony in State of Bermudez, with right to select 10,000 hectares of land.	Unlimited	Approved by Congress August 4, 1883. See No. 12. This took 10,000 hectares of wild land out of State of Bermudez.
6	July 6	3003	do	Rafael Polly	Essential oils and dyestuff in entire Republic.	10 years	This took all dyestuff and essential oils in Bermudez out of the operation of the Hamilton concession.
7	Aug. 14	3026	do	Luis Vallenilla	Navigation extended to include port of Maturin in State of Bermudez.	do	Hamilton's assignees could therefore have no exclusive right to navigate Guarapiche from Cano Colorado to Maturin, and the consideration for the second additional article to concession never existed; was there fraud?
8	Aug. 16	3028	do	do	2 contracts approved by Congress: 1st between Ciudad Bolivar and Trinidad; 2d, between La Guaira and Trinidad; the latter extended to include Maturin.	do	See remarks to No. 7.
9	Aug. 23	3024	do	Andres A. Silva	To establish a line of steamers from Maturin to Trinidad.	do	See remarks to No. 7 as to failure of consideration for second additional article.
10	Sept. 18	3056	do	Horacio R. Hamilton	The right to explore and exploit the products of the forests existing in the wild lands in the whole State of Bermudez; to take wood for construction, cabinet making, and other industrial purposes, and the resins, plants, and aromatic extracts, essential oils, dyestuffs and medicinal plants, also asphalt. The right to navigate by small steamers the rivers of the State of Bermudez, and to cut wood from banks of river for said steamers. The section of Barcelona is excluded for wood only.	25 years	This is the first appearance of the Hamilton contracts in the Official Gazette, and without the first additional article mentioned in article 5 of the contract.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
11	1883. Sept. 29	3063	Min. of fomento M. Carabano.	Bartolome Ramirez	Exclusive right to export gamelote and other textile plants.	15 years	This took all this class of plants in Bermudez out of the operation of Hamilton's contract; 6 months additional allowed for beginning. See No. 3165.
12	Oct. 15	3076	do	Sociedad Anonima de la Costa Firma.	Establishment in State of Bermudez of a mining colony of 10,000 hectares, equal to 20 concessions of 500 hectares each.	Unlimited	See No. 5.
13	do	3076	do	Carlos H. Mijares	Exclusive right for ten years to manufacture rope in Venezuela, with right to take cocuzia and other textile plants on all wild lands.	10 years	This takes all this class of plants in State of Bermudez out of the operation of Hamilton contract.
14	Oct. 27	3087	do	Horacio R. Hamilton	See No. 10. The additional article mentioned in Article 5 of contract added.	25 years	See No. 10.
15	Oct. 29	3088	do	Andrez A. Silva	Steamers between Maturin and Trinidad. See No. 9.	10 years	Approved by Congress and signed by President Guzman Blanco.
16	Nov. 14	3102	do	Luis Vallenilla	Additional article to No. 7 formally approved by President and Congress, allowing steamers to go to Maturin. See also 9 and 15.		This is a case where an additional article was formally approved by President and Congress.
17	1884. Feb. 12	3174	do	Miguel M. Herrara	Exclusive rights to manufacture cement, mortars, and hydraulic lime in several States, including Bermudez, with right to take wild lands.	25 years	Right also given to open communicating roads to get out material. Signed by President June 6, 1884. See Official Gazette, 3279, June 25, 1884.
18	Apr. 7	3223	do	Miguel Tejera	Exclusive right to export rubber and gutta-percha in the whole of the section of Maturin, State of Bermudez. Must establish a line of steamers from Maturin and Guiria to Trinidad. Must canalize the Guaraprche from Cano Colorado to Maturin. Can have all wild lands necessary for cattle and cultivation. During life of contract no person or corporation will be granted similar rights for rubber and gutta-percha in State of Maturin, nor to establish steam navigation on the rivers leading to this concession.	25 years	This contract is dated March 26, 1884, published April 17 in Official Gazette, and covers among other points the exact words almost of the second additional article to Hamilton contract. See No. 24 below.
19	Apr. 21	3226	do	Luis Vallenilla	Cabinet amends contract permitting vessels to Maturin for failure to comply with its provisions. See Nos. 7 and 16.		Apparently cancelled to make way for Tejera's contract giving him exclusive rights.

20	Apr. 23	3228	.....do.....	Jose Andrade.....	Annulling contract for asphalt in State of Zulia on account of its conflicting with that of Geo. A. Philips and Horacio R. Hamilton, which is declared in full force and effect. See No. 2 above.	.....	This contract No. 2 laps over and includes the one for the State of Bermudez. See No. 2.
21	Apr. 26	3231	.....do.....	Roberto Quesnel.....	Right for 99 years to all mines in Dist. Bermudez, within certain given limits, reaching from Carupano to El Pilar; also right in said limits to all timber, firewood, and the right to all land necessary for cultivation of whatever nature, and also for pasture land.	99 years.....	There was excluded from this contract all concessions made to others, and revalidated as to mines in the decree of Nov. 15, 1883, regarding mines. Signed by the President June 17, 1884. See Official Gazette No. 3299 of July 19, 1884.
22	May 2	3234	.....do.....	H. R. Hamilton.....	Hamilton contract presented in Chamber of Deputies under date of April 12, 1884, by the Permanent Commission on Fomento and action reserved. See No. 10.	.....	This was the original Hamilton contract with the first additional article only; the others had not yet been signed.
23	May 19	3248	Minister fomento, Jacinto Lara.	Geo. W. H. Brogden and Carper.	Exclusive right to cultivate ramie and to export it from country, with grant of 500 hectares of wild land in Bermudez.	25 years.....	Approved by President June 19, 1884, published in Official Gazette No. 3278, June 24, 1884.
24	May 30	3258	.....do.....	H. R. Hamilton.....	Contract No. 10-14, with three additional articles, signed on May 30, 1884, treating of new subjects made with a different minister and at another date from the original contract.	25 years.....	These additional articles were signed subsequent to the signing of the contract with Miguel Tejera, No. 18, above, and are in direct conflict therewith, and were never approved by Congress.
25	June 16	3271	Joaquin Crespo, Jacinto Lara.	Bartolome Ramirez.....	See Nos. 11 and 22.....	15 years.....	Final approval by President and Congress. This contract was held up in committee the same day as the Hamilton contract, but was reported out and published and given right in State of Bermudez, which takes away from the value of Hamilton's concession. See Official Gazette, No. 3263.
26	July 21	3300	.....do.....	Horacio R. Hamilton.....	The Hamilton contract and first additional article approved by Congress, signed by the President June 6, 1884, published in Official Gazette, 3300, July 21, 1884. The other additional articles published and executed on May 30 (see No. 24, above) were not acted upon by Congress, although they were before it at this time for action, but conflicted with the terms of Miguel Tejera's contract, No. 18, above, which was executed prior to the signing of these additional articles to Hamilton contract.	.....	See notes on proceedings in Congress affecting the Hamilton contract.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
27	1884. Aug. 7	3314	Jacinto Lara	Compania Mansa Limitada Cossimaire de C. C. Fitzgerald.	Granting to said company the right to exploit the asphalt found in the limits of their concession, because their concession was in full force and effect when the contract with Geo. A. Philips and H. R. Hamilton, executed May 7, 1883, was declared null and void and was substituted by another entered into with them on April 17, 1884. See Nos. 2 and 20, above.		There appears to be an unaccountable error in this decree, because the decree of April 17, 1884 (not contract), declares the contract of May 7 (No. 2, above) to be in full force and effect, and for that reason they declared null and void the contract with Andrade (No. 20, above).
28	Sept. 16	3322	do	Juan Marcano, attorney for Brogden and Carper, cessionaires of B. Ramirez. See No. 11.	Repeats No. 11 with an additional article giving extended rights and recognizing Brogden and Carper as cessionaires (assigns) of Bartolome Ramirez through their attorney-in-fact, Juan Marcano.		
29	1885 Jan. 29	3435	President and Congress.	Alejandro Salcedo	The President and Congress approve and publish an additional article to a contract, as being a contract in itself with all formalities.		This was never done with the second, third, and fourth additional articles to the Hamilton contract. See No. 26 above.
30	Feb. 7	3443	President, Congress, and Minister of fomento.	Manuel M. Quintero	Additional articles to a contract signed and approved with all formalities.		Signed by same men who signed the Hamilton contract, but the additional articles to Hamilton contract were never so acted upon.
31	Mar. 22	3471	Cabinet and Jacinto Lara.	Horacio R. Hamilton	Granting delay of 6 months from March 1, 1885, to begin work.		
32	Apr. 9	3483	Minister of fomento	do	Minister of fomento in official notice asks Congress to consider and pass upon the additional articles to contracts, mentioning specifically the one with H. R. Hamilton. They were all referred to the Permanent Committee on Fomento.		These contracts were—7—the additions which have been made to the contracts made with the Soc. of Costa Firma, H. R. Hamilton, B. Ramirez, Francisco H. Uztariz, Manasis Capriles and 2 with Luis Felipe Marcucci. They were all so acted upon except the one with Hamilton.
33	Apr. 13	3486	do	Miguel Tejera	Contract (see No. 19 above) presented to Congress for formal action and referred to Committee on Fomento, as was done with those in No. 32 above.		
34	May 22	3518	President of Senate	Civil Soc. of Costa Firma	(See 5 and 12 above.) President of Senate fixed as "Order of Day" for day following the consideration on third debate on contract additional to the one made with Soc. Civil de Costa Firma.		This point was never reached with the additional articles to the Hamilton contract.

35	May 25	3520	Senate	do	The contract additional to that with "Costa Firma," see 32 and 34, approved on third debate and a certified copy sent to other Chambers, to continue its constitutional course.		See 32 and 34 above. This was never done with the Hamilton contract.
36	do	3520	Minister of fomento	Robert Quesnel	Petition for title to two parcels of wild land of 400 mines each, 8 lead, copper and others, in the State of Bermudez. See No. 21.		
37	June 16	3538	Chamber of Deputies.	Theo. Delort, att'y of Soc. C. F.	Chamber of Deputies returns to Senate certified copy, approved without alteration, of the clauses additional to the contract entered into with Theo. Delort, att'y-in-fact for Soc. of Costa Firma.		(See 32,34,and 35.) Ordered engrossed and Senators Lares and Carstens appointed a committee to present it to the President for his signature and promulgation.
38	June 26	3547	President and Congress.	Luis Felipe Marcucci	Final approval by President and promulgation of the additional articles to all of the contracts with Luis Felipe Marcucci mentioned in remarks to No. 32 above.		See remarks to No. 32.
39	Oct. 30	3634	Cabinet and minister of fomento.	H. R. Hamilton	Granting of 2d period of 6 months delay in beginning work, on payment Bs. 2,000. In granting this extension no mention is made of the additional articles, or of the purposes for which they were added.		See No. 31.
40	Dec. 19	3662	President and minister of fomento.	Carlos Palacio	Opening port of Maturin to cattle trade in accordance with article 5 of a contract. This was directly opposed to Hamilton's rights under the second additional article and therefore the consideration for that article ceased to exist from this date.		Have been unable so far to locate the contract referred to.
41	1886. Feb. 23	3696	President and Federal Council.	Francisco Hernandez Uztariz.	Granting a delay of one year in commencing work on this contract. But in this case they say: "His contract entered into on Dec. 7, 1883, and which was modified Jan. 24, 1885." In granting delay to Hamilton no mention is made of the modifications of May 30, 1884, because they were never recognized by Congress, and therefore never became effective.		See remarks to No. 32 above.
42	Mar. 10	3707	President, Federal Council and minister of fomento.	Felix M. Bovet	Article added to a contract at request of holder by advice and consent of Federal Council.		Even this formality was never observed as to the last 3 additional articles to the Hamilton contract.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
43	1886. Mar. 27	3722	President, Federal Council, and minister of fomento.	Felix M. Bovet	Annulling contract above for submarine cable and among the reasons therefor it is stated: "That the contract (referred to) was never formally approved by Congress and therefore lacked legal perfection . . . and as it conflicted with a contract with Senor Rohl, the Government is bound to protect and guarantee the priority of promises which have the approval of the high powers of the State." . . . The additional articles to the Hamilton contract were in the same condition and infringed or conflicted with the right of Miguel Tejera.		This is substantially the answer made by Guzman Blanco, President of Venezuela, to the secretary of the New York & Bermudez Co. when the latter complained that Pinelli's contract infringed the rights of the N. Y. & B. Co., but it was not so explicit.
44	Apr. 2	3725	Minister of fomento	Hamilton contract	Secretary of N. Y. & B. Co. under date of March 30, 1886, reports work already done under Hamilton contracts and also that projected for the immediate future.		
45	May 8	3753	President and Congress.	Joaquin Crespo	Approving all acts and decrees and resolutions dictated by Joaquin Crespo in the two years 1884 and 1886 and executed by the various departments, dated May 1, 1886. See No. 43 above.		This act was relied upon by the Att'y General as the evidence that Congress approved the additional article to the Hamilton contract, although Congress never did so specifically. See No. 77 below, also decrees of high federal courts on this subject.
46	May 10	3754	Minister of interior relations.	Miguel Tejera	Establishment of a mint in Caracas or La Guayra and also for a line of steamers from La Guayra to Ciudad Bolivar and intermediate points. This included Maturin.		Made in Paris between Guzman Blanco and Miguel Tejera.
47	May 27	3769	Senate proceedings of May 1, 1886.	Miguel Tejera	To construct a railroad in State of Zulia; additional articles considered and approved on 3d reading in Senate. Never done in case of the Hamilton contract.		
48	Sept. 30	3886	President and Fed. Council through min. of fomento.	Luis Felipe Marcucci	Annulling contract, but in doing so the additional articles were specially mentioned as being annulled also.		They did not wait 21 years to do this, as was the case with the Hamilton concession.
49	Nov. 25	3910	Pres. and Fed. Council	Executive decree.	Removing the custom-house of Maturin to the port of Cano Colorado.		

50	1887. Mar. 24	4002	Pres. and Fed. Council through min. of fomento.	....do.....	Annulling 2 contracts for failing to comply with terms.	.....	This was done promptly, as was also done with several others; they did not wait over 21 years, accepting duties and taxes all the time, and then canced, as was done with the Hamilton contract.
51	Apr. 30	4030	Min. of fomento.....	Felipe Pinelli.....	Contract for a line of steamers from Ciudad Bolivar to the Guyanas.	15 years.	This was later extended to include Maturin, and was the ground of a formal complaint by the New York and Bermudez Co.
52	May 28	4054	..do..	..do.	2d contract with extension of first one, see No. 51, permitting his vessels to enter the port of Maturin and to load cattle at any point of the Guarapiche from Cano Colorado to Maturin. This in direct conflict with second additional article of Hamilton contract.	.....	As soon as this came to the notice of the N. Y. & Bermudez Co. they protested in writing to the Venezuelan Government as a violation of their rights; that relying on the second additional article they had spent large sums in canalizing the Guarapiche between the points named. See testimony of defendant in suit and Government's reply thereto.
53	June 17	4071	President and Congress.	G. Laffon & Co....	Contract for 2 railroads, one from Petare to Guariquen or its vicinity, on the Gulf of Paria, and one from a point on this line through Maturin to a point opposite Ciudad Bolivar; both through the State of Bermudez, with the right to take a strip of land 1 kilometer wide on each side of the tract and such other public land as might be necessary.	.....	Also had right to cut timber on all public lands in the State of Bermudez.
54	June 18	4072	do	do	Changes and additions to contract (No. 53 above) for construction of railway. Submitted to and approved by Congress.	.....	This was never done with second, third, and fourth additional articles to the Hamilton contract.
55	June 20	4073	do	F. Pinelli	Contract (No. 51 above) approved by Congress and President.	.....	
56	June 22	4075	Minister of fomento	Roberto Quesnel	Contract to exploit all mines in Dist. of Bermudez, Sec. Cumana, State of Bermudez, with rights to take timber to colonize.	99 years	
57	Oct. 15	4166	President and Congress	A. Moron	Contract with A. Moron, giving him right to collect from all wild lands of the nation "Gamolete, paja, and other fibrous plants." See Official Gazette of August 10, 1887, No. 4116, for contract, for which this is an additional clause	25 years	See Nos. 11 and 22. This is an additional clause to Moron's contract for manufacture of paper, and it takes all these plants in the State of Bermudez out of the Hamilton contract.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
58	1888. Feb. 24	4274	Minister of fomento..	F. Pinelli.....	D. M. Battistini petitions Government to allow him to continue the export of cattle from Ciudad Bolivar to the Guyanas in spite of the 2 contracts (reciting them) with Pinelli. Petition refused. This is entirely in line with Government action on protest of N. Y. & Bermudez Co. against same contracts of Pinelli.	.....	Here an additional article to a contract is officially recognized as a separate contract, and a line of steamers in actual operation was suppressed for one in prospect.
59	May 29	4344	.....do.....	.....do.....	Granting a delay (of 6 months from date) to begin the operation of his steamers in conformity with Article 2 of contract.	.....	See No. 51 above and translation of contract.
60	Aug. 4	4401	.....do.....	.....do.....	Granting further delay of 6 months for beginning his contract.	.....	See Nos. 51 and 59.
61	Aug. 18	4413	Minister of public works.	.....do.....	The President of the Republic with the affirmative vote of the Federal Council approves the contract "for the construction of a railroad running from Maturin to a point to which the Cano Colorado is navigable," which contract was entered into by the illustrious American E. E. and M. P. of the United States of Venezuela to various ports of Europe and F. Pinelli on July 13, 1888. Decree dated August 16.	.....	See 2d additional article to Hamilton contract.
62	Aug. 21	4415	Minister of fomento..	Miguel M. Herrara.....	Contract for making earthenware and porcelain and permitting contractor to make use of grass on any public land in the Republic.	.....	This right to cut grass for packing purposes covered the State of Bermudez if contractor so elected.
63	Aug. 22	4416	.....do.....	Manuel Sanchez.....	Contract for steam navigation of certain streams in the State of Bermudez with exclusive rights and right to extend navigation to certain large towns, exclusive towing rights, etc.	10 years.	Owing to the exclusive rights granted this contractor, this took these streams out of the operation of the Hamilton contract as well as a large section of the State.
64	1889. Jan. 25	4549	.....do.....	Juan Anselmo.....	Contract for cultivation of "ramie" or china grass, giving him the right to take 1,000 hectares of wild land wherever he elected, and giving his emigrants right to take other parcels of wild lands without excepting the State of Bermudez. See Off. Gazette No. 4676, June 26, 1889.	10 years.....	(Parish of San Simon, Dist. Maturin.) Contractor selected State of Bermudez for his operations. This took 1,000 hectares of wild land out of operation of Hamilton contract.

65	Feb. 20	4571	.....do.....	Pedro Mora and Domingo..	For exploring and exploiting all the products of nitrates and similar substances in certain sections, inter alia in sections of Cumana and Maturin in State of Bermudez, with other rights as to wild lands in conflict with Hamilton contract.	25 years.....	
66	May 29	4652	President and Congress.	Juan Anselmo.....	Contract No. 64 above, as finally passed by Congress and approved by the President and Federal Council with certain additions and alterations for the purpose of clearing up doubtful points. All these latter were approved by Congress and President previous to signing same.	10 years.....	See No. 64. Attention is called to this as an example of the fact that the Venezuelan Congress *does* have to pass upon all additions and alterations, even when they make clear obscure or doubtful points.
67	June 29	4679	Minister of fomento..	Daniel E. R. Lucas.....	Contract for exploitation of asphalt in sections Cumana and Maturin of State of Bermudez on line of proposed railroad from Maturin to Cano San Juan, to which latter point the route was authorized. The terms of every article of this contract are in violation of both the letter and spirit of the Hamilton contract.	99 years.....	Cano San Juan was selected. The New York and Bermudez Company had canalized the river to that point and had there established a wharf and shipping point for cattle, etc. This railroad was contemplated in the second additional article to the Hamilton contract and the concession should have been given to him.
68	1890. Apr. 2	4912	Minister of public works.	.....do.....	As route was changed on May 2, 1889, the time for executing the work runs from that date forward.	.....	See No. 67.
69	1891. July 31	5318	Federal Council.....	Horacio R. Hamilton.....	Resolution declaring null and void the Hamilton contract of September 15, 1883, which was added to on October 19, 1883, and May 30, 1884 (no reason being given), but specifically excepting from this decree the asphalt mines possessed by the New York and Bermudez Co., assignee, under the above contract, and which is located in Guariquen, section Cumana, as all the legal requisites in regard to it have been fulfilled; session of July 22, 1891.	.....	Referred to a committee of one, Riera Aguinalde, for study and report. This resolution was held up by the committee to which it was referred for a long time.
70	Aug. 3	5320	.....do.....	.....do.....	Resolution of nullification of above contract as to woods, resins, plants, and dyeing and medicinal tinctures omitted from previous resolution.	.....	Referred to same committee on previous resolution.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
71	1892. Nov. 5	5636	Report of bureau heads of minister of fomento.	.....	When Crespo came in as President, after the overthrow of J. P. Rojas Paul, the archives of the ministry were found in a deplorable condition, papers lost, stolen and destroyed, etc. This is the report of it to the minister of fomento to put it on record.	.....	This may account for the lack of knowledge on the part of present officials of the facts disclosed by a careful search of the Official Gazette, as the Government does not possess a complete set of Gazettes, I am told.
72	1893. Jan. 5	5688	Minister of fomento..	Antonio F. Castillo.....	Contract for manufacture of artificial stone and mosaics covering the State of Bermudez and permitting contractor to take all the wild land necessary, and to take his material from any land belonging to the nation.	.....	This took all the deposits of clay, kaolin, etc., from the operation of the Hamilton contract.
73	Feb. 8	5717	President and Federal Council through minister of public works.	Alfredo Fromentin and L. R. Soler.	Contract for railroad from Maturin to Cano San Juan, petition granted to have the concessions in article 8 of the contract cover also the preservation and maintenance of the railroad.	.....	Have been unable to find this contract but think these holders are the assignees of Maninat.
74	Feb. 28	5734	Minister of fomento..	Juan Bautista Lameda.....	Contract for Roman cement and hydraulic lime, covering specifically the State of Bermudez and power to take wild lands necessary, also to open necessary communicating ways for marketing his product without prejudice to others.	.....	This took limestone, etc., in the State of Bermudez out of the operations of the Hamilton concession. All similar concessions disprove the Government's contention that the Hamilton contract prevented the development of the State of Bermudez.
75	Apr. 28	5781	.....do.....	Dr. Benigno Campos.....	Exclusive right to explore and exploit from all forests and wild lands in the State of Bermudez, vegetable product known as purvio and purgua, Munucopo, Globsoa, by himself, his agents, or special contractors.	25 years.....	This took all of this plant (medicinal) covered by the Hamilton concession out of its operation.
76	June 3	5813	.....do.....	A. Moron.....	Contract of A. Moron and his assignee, the American Paper Mfg. Co., of August 8, 1887, substituted by that of May 16, 1888, annulled on account of the nonfulfillment of terms.	.....	This was delayed a long time after it had lapsed in accordance with its terms.
77	June 10	5826	Constitutional Assembly.	Joaquin Crespo.....	Article 10, approving each and all of the acts executed by Gen. Joaquin Crespo as chief of the revolution and as head of the National Executive. Article 2, all contracts made under the authority of said head of the National Executive must be submitted to the consideration of the next Congress in order that they may be approved or	.....	Compare this with No. 45, above, and consider the effect of the decision of the High Federal Court on this subject given in the interval between them. This act recognizes the unconstitutionality of Guzman Blanco's decree of Sept. 29, 1883, which attempted to nullify the powers of Congress over contracts as set out

					disapproved by the legislative bodies in conformity with their constitutional powers, which this assembly lacks, being a constitutional body only.		in div. 17 of article 43 of the constitution of 1881.
78	July 10	5843	Minister of fomento...	Francisco D. Lebon.....	Contract for paper making similar to that with A. Moron, which was declared null and void on June 3, 1893, and with the same rights as to wild lands and fibrous plants. See No. 76.	.....	See also Nos. 11, 22, and 57, above, and remarks to same.
79	Sept. 28	5912	Cabine nd ministe of fomento.	Juan Marcano.....	Contract for cutting and exporting all the gamolete, cariazo, cabezan, or pajagrava found growing on wild lands in the State of Bermudez.	.....	These are the plants used for making pulp for manufacturing paper; this was against the terms of the Hamilton concession and was also the subject of art. 5 of No. 78, above. They did not seem to care whether contracts conflicted or not.
80	Nov. 16	5953	Federal Council.....	N. Y. & B. Co. by Alfredo Scharffenorth.	Contract for construction of custom-house at mouth of the Guarapiche and report of the Commissioner of the Federal Council approving same. This contract has never been rescinded or annulled.	.....	See Documents 7-61.
81	1894. Jan. 17	6005	Minister of interior relations.	Ellis Grell.....	Granting right to operate a line of steamers between Ciudad Bolivar and Maracaibo, touching at certain points named, with the right to touch at all other open ports of the Republic. This included Maturin.	15 years.....	The contractor also had right to take timber for shipbuilding and other purposes from the wild lands of the nation wherever found.
82	May 10	6097	.....do.....	.....do.....	Minister reports to Congress that contract has been transferred to Manuel Antonio Sanchez, also reporting to Congress 2 additional articles to said contract.	.....	See No. 81.
83	May 21	6106	President and Congress.	Jose Rafael Ricart.....	Contract for canalizing river Garacuy, establishing a line of steamers drawing from 2 to 3 feet, and later on added to by 5 additional articles which are treated as a separate contract, as far as their formal approval went, but which are finally called additions to the first contract, and as such approved by all the officers of both houses of Congress and the President with all formalities.	.....	This was never done with the second, third, and fourth additional articles to the Hamilton contract.
84	June 16	6129	.....do.....	Ellis Grell.....	Full text of contract as transferred to Manuel Antonio Sanchez with the two additional articles by both branches of Congress. Signed by President and countersigned by Minister of Interior Relations. See Nos. 81, 82 above.	.....	See remarks to No. 83 above.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
85	1894. June 22	6134	President and Congress.	Jose Rafael Ricart	Delay of 2 years granted to contractor for his contract executed on Sept. 24, 1891, and for that of the addition and alterations dated Dec. 10, 1892, for canalization and navigation of river Garacuy.		See No. 83 above and remarks to same.
86	July 18	6155	Minister of public works.	Count Charles Leon and others.	Contract for a railroad in the State of Bermudez beginning at Carupano and extending to El Pilar in Dist. Benitez with branches to the Rio Caribe and through District Arismendi; with rights to take timber, condemn private lands, to own all mines discovered, to take a strip of land on both sides, 500 meters square in alternation with equal blocks belonging to the government. This covered the District of Bermudez, Benitez, and Arismendi. Approved by Congress and President Aug. 25, 1894. See Official Gazette 6218 of Oct 1, 1894.	99 years	As this covered the district in which Bermudez Lake was located, this contractor could have run his line through the company's property and confiscated the company's property.
87	1895. Feb. 28	6343	do	Henrique Chaumer	Contract for a railroad from Maturin to Cano San Juan similar to the previous ones, but no 7 per cent guarantee. Finally approved by President and published June 7, 1895. See Official Gazette No. 6423.	99 years	See Nos. 61 and 73.
88	May 11	6400	President and Congress.	Juan B. Lorenda	See No. 74. Contract entered into on February 17, 1893, approved by Congress May 11, 1894, and finally approved by the President and published in May, 1895, from which last date it took effect.	20 years	See No. 74.
89	Oct. 15	6533	Minister of public works.	James Schaeffer	Granting right to take all sulphur in "Las Minas," District of Benitez, State of Bermudez; cableway to a navigable point in the Cano de Ajres; and exclusive right to navigate said Cano.	In perpetuity	This took all this sulphur out of the operation of the Hamilton concession.
90	1896. Feb. 28	6648	Minister of fomento	U. B. Castello	For the manufacture of glass, crystal and porcelain in the State of Bermudez or elsewhere, with right to take public lands and the usual concessions as to monopoly, freedom from	50 years	This took all these materials in the State of Bermudez out of the operation of the Hamilton concession See also No. 72.

					duties. Additional articles added April 25, 1896. See Official Gazette No. 6695.		
91	1897. Jan. 22	6921	Minister of Fomento Alberto.	.....	Resolution regulating and taking the collection of pulvio, rubber, resins, oils, and other natural products of the forests or wild lands, whether belonging to the nation or ceded to individuals under contracts. A personal permit had to be obtained from the minister of fomento, etc.	.....	See translation accompanying.
92	Apr. 7	6984	President and Congress.	Eduardo J. Dagnino.....	A contract entered into Dec. 24, 1896, modified Feb. 8, 1897. This modification was embodied in the decree publishing this contract as part of the body of the contract itself and above the signatures of the officers of Congress and of the President of the Republic. Two letters explaining the interpretation of a clause of the contract were also published in connection with the contract and made part of the record.	.....	This was never done with the second, third, and fourth additional articles to the Hamilton contract.
93	May 10	7007	Minister of public works.	R. E. de la Cieba.....	Articles 5, 9, and 14 of the original contract changed with the authorization of the President of the Republic and the affirmative vote of the council of Government. The approval of this change by Congress and President is published in Official Gazette No. 7082, of Aug. 6, 1897.	.....	See Official Gazette No. 7082 of Aug. 6, 1897.
94	May 27	7022	President and Congress.	The Coro & La Vela Ry. Co..	A resolution and an additional article to the original contract, approved by President and Cabinet Sept. 22, 1896. Approved Congress May 18, 1897. Signed by President May 24, 1897, and became effective on its publication May 27, 1897. Original contract executed April 6, 1896. Official Gazette No. 7022.	.....	This shows that up to 1897 additional articles to contracts were treated in all respects, as to the formalities of their approval, in the same manner as original contracts. This was never done with the second additional article to the Hamilton concession.
95	1898. Jan. 11	7213	Minister of fomento...	Horacio R. Hamilton.....	Decree declaring null and void the contract entered into Sept. 15, 1883, and added to Oct. 19, 1883, and May 30, 1884, but leaving free from the operation of said decree the rights which, according to law, the New York and Bermudez Co. possesses by its mineral concessions. For translation see printed book "Felicidad."	.....	See No. 69 above. This was done at the consent of cabinet and council of Government, approved by President, but was later on declared unconstitutional by the high federal court.

No.	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
96	1898. May 6	7308	Minister of agriculture	M. C. Coronel, Carlos Plaza, and Juan Plaza.	Proposed law for establishing 6 agricultural centers. Referred to "Standing Committee on Agriculture of Chamber of Deputies" and reported back with a negative recommendation, because it had not received approval of legislative body.	.....	See translation herewith
97	Sept. 17	7421	Hight federal court...	Horacio R. Hamilton.....	Decision of court declares null and void the decree of the minister of fomento, canceling the Hamilton concession as a usurpation of authority. See No. 95 above for decree.	.....	Three judges dissented; full bench, 9 judges.
98	1899. June 12 Oct. 23	7645	President and Congress.	Italian Colonization Society	Contract with an additional article, which additional article was submitted to Congress for action, which additional article has received the approval of all the high powers of the Republic, and published with the approved contract over the signatures of all the officials. Company had rights to establish steam lines, telegraphs, railroads, etc. Company could also take wild lands for colonies not restricted to any particular part of the country.	15 years.....	This was done with the first additional article to the Hamilton contract, but was never done with the second, third, or fourth.
99	1900. Mar. 30.	7892	Minister of fomento..	Antonio Lara.....	Exclusive right to establish in the Republic the manufacture of cement and to make use of all public lands for that purpose and wherever he deems it best to locate.	10 years.....	10 months' delay granted on Aug. 6, 1902. See Official Gazette No. 8607, Aug. 6, 1902.
100	Oct. 13..	8055	.....do.....	Luis Felipe Muro.....	Exclusive right to establish in the Republic the manufacture of porcelain and hydraulic limes, wherever he deems it advantageous to use wild lands.	10 years.....	Time for beginning work extended on Oct. 21, 1901, for 6 months. See Official Gazette No. 8366, Oct. 2, 1901.
101	1901. Feb. 28..	8169	.....do.....	P. Giuseppi Monagas.....	Manufacture and sale of matches with additional articles.	25 years.....	
102	1902. Mar. 5..	8479	Congress.....	.....	General decree approving all acts of General Castro as Provisional President.	.....	

103	Mar. 15.	8488	Minister of fomento..	Miguel Maria Bermudez....	Drinking water to be furnished to Island of Coche. Submitted to Congress for action, notwithstanding the general decree in 102 above. Disapproved in next Congress. See Official Gazette No. 9520, July 24, 1905.	.....	This and following contracts show that it was still the law in Castro's time and up to Aug. 24, 1905. See No. 118.
104	....do..	8488	.....do.....	Jose Roura.....	Manufacture of preserves in Venezuela..	.....	See remarks to No. 103.
105	....do...	8488	.....do.....	Jesus Lameda.....	Cultivation of bananas and export of fibers and other products.	.....	Do.
106	....do...	8488	.....do.....	Jacinto R. Arvelo	Exploitation and exportation of pearls, amber, coral, etc.	.....	Do.
107	Mar. 17.	8489	Minister of public works.	Guillermo Prince.....	Embarking cattle at Puerto Cabello....	.....	Do.
108	....do...	8489	.....do.....	Geo. W. Crichfield.....	Steam tramway and other works for mine "Incarte."	.....	Do.
109	Mar. 22	9110	Chamber of Deputies.	Attorney-general.....	Election of Attorney-General Dr. F. Arroyo Parejo and his assistants, Carlos Leon and J. V. Iribarren.	.....	These officials conducted suits against the company in 1904, 1905, 1906, and 1907, and J. V. Iribarren was in charge of sequestration proceedings at Guanoc in 1904.
110	....do...	9110	Minister of public works.	Ernesto D. Mata.....	For the construction and operation of a wharf in Carupano.	.....	See remarks to No. 103.
	1904.						
111	Mar. 23	9111	Minister of interior relations.	A. G. Poleo, Ant. & F. Feo..	Line of steamers between Venezuela and Cuba.	.....	See remarks to No. 103.
112	Apr. 20	9132	Congress and President.	E. M. Oramas	Glass, porcelain, etc.....	.....	Do.
113	Apr. 20	9132	.....do.....	Jose M. Mendez.....	Administration of Island of La Tortuga	.....	Do.
114	Apr. 28	9139	.....do.....	H. Thielen.....	Coastwise navigation between Maracaibo and Guiria.	.....	Do.
115	Apr. 29	9140	.....do.....	Manuel Carao.....	Navigation of Orinoco and tributaries.	.....	Do.
116	Apr. 30	9141	.....do.....	A. Garcia Poleo.....	Canalization and navigation of River Tuy; 3 feet of water only required.	.....	
	1905.						
117	June 16	9489	Minister of fomento..	Alejandro Melo.....	Exploitation of pearls, etc.....	.....	Disapproved by Senate July 27, 1905.
118	July 8	9507	Congress	Law of Contracts.....	Various senators introduced a resolution embodying a new law governing contracts of public interest, which may be entered into by the National Executive during the recess of the National Legislature.	.....	For law as approved see No. 9547 of Aug. 24, 1905.
119	July 8	9507	Minister of public works.	Gregorio F. Golding.....	For the construction of a wharf in Carupano. See also No. 110.	.....	See remarks to No. 103.
120	Aug. 14	9538	Congress in joint session.	J. F. C. Madueno.....	For establishing the National Bank of Venezuela. This was executed by President Castro in pursuance of special powers conferred on him by Congress. Notwithstanding the above it was referred to Congress for ratification.	.....	For contract as approved see No. 9545, Aug. 2, 1905.

[a] Castro assumed the Presidency.

No	Date published.	Off. Gaz.	Gov. official.	Original holder.	Subject of contract.	Duration.	Remarks.
121	1905. Aug. 14	9538	Congress is joint session.	J. F. C. Madueno.....	For monopolizing the manufacture of cigarettes. Executed by President Castro in pursuance of special powers conferred on him by Congress. Notwithstanding this it was referred to Congress for ratification.	.....	For contract as approved see No. 9545, Aug. 2, 1903.

Secretary of State to Mr. Russell.

[Telegram.]

FEBRUARY 18, 1908.

Ascertain whether the refusal of Venezuela to accept our proposal of arbitration of pending claims is designed to apply to each and every one of the five claims presented by you on the 30th of March, and if she is ready to arbitrate any of those claims which ones she is willing to arbitrate.

ROOT.

Minister Russell to the Secretary of State.

No. 289.]

AMERICAN LEGATION,
Caracas, February 29, 1908.

SIR: I have the honor to inform you that in accordance with the instructions contained in your cable of the 19th instant, confirmed in a separate dispatch, I addressed a note to the Venezuelan Government on the 22d instant, with a view to ascertain its attitude in regard to arbitration in the five pending cases presented by the Government of the United States. On the 29th instant I received the answer from the minister for foreign affairs, copy and translation of which is inclosed, as also a copy of my note to the foreign office.

I have, etc.,

WILLIAM W. RUSSELL.

[Inclosure.]

FEBRUARY 22, 1908.

MR. MINISTER: I have the honor to inform your excellency that I have been instructed by my Government to ascertain whether the refusal of Venezuela to accept our proposal of arbitration of pending claims is designed to apply to each and every one of the five claims presented by me on the 30th of March, and, if Venezuela is ready to arbitrate any of those claims, which ones she is willing to arbitrate.

I take, etc.,

W. W. RUSSELL.

[Inclosure—Translation.]

MINISTRY OF FOREIGN AFFAIRS,
Caracas, February 29, 1908.

MR. MINISTER: I have the honor to acknowledge the receipt of your excellency's courteous communication of the 22d instant, and in reply to the question asked by your excellency, under instructions from your Government, I must say to you that the Government of Venezuela refrains, for the present, from taking into consideration the suggestion made to it in your courteous note, for the reason that up to now you have not contradicted ("contradicho") the notes from this ministry of July 9 and September 20 of last year, relative to the points which have been the subject of discussion, and in which notes were well set forth the reasons upon which this Government based its refusal.

Consequently, as the cases referred to by your excellency can not be considered as being comprised amongst those which call for diplomatic action, the Government of Venezuela would view it with satisfaction if the Government of the United States would consider this question as closed, the interested parties always having the right of recourse to the tribunals of justice of the Republic, should they deem fit.

I avail myself, etc.,

J. DE J. PAUL.

Minister Russell to the Secretary of State.

[Telegram.]

WILLEMSTAD (*February 29*),
(Received March 3, 1908—1.40 p. m.)

The Venezuelan Government answered to-day my note, sent in accordance with your cable instructions 19th.

Minister for foreign affairs states that Venezuela refrains from considering for the present the question of arbitration, because I have not as yet refuted the arguments in notes July 9 and September 20, in which notes Venezuela plainly stated grounds for refusing to arbitrate. Note concludes as follows:

Consequently, as the cases referred to can not be considered as being comprised among those which call for diplomatic action, the Government of Venezuela would view it with satisfaction if the Government of the United States would consider this question as closed, the parties interested always having the right of recourse to the tribunals of justice of the Republic should they deem fit.

RUSSELL.

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